BBC RESEARCH & CONSULTING

**Draft Report**

# MTS Disparity Study Draft Report

Metropolitan Transit System

BBC
RESEARCH &
CONSULTING

**Draft Report**
September 21, 2009

# MTS Disparity Study Draft Report

**Prepared for**

Metropolitan Transit System
1255 Imperial Ave., Suite 1000
San Diego, CA 92101
619.557.4512

**Prepared by**

BBC Research & Consulting
3773 Cherry Creek N. Drive, Suite 850
Denver, Colorado 80209-3868
303.321.2547 fax 303.399.0448
www.bbcresearch.com
bbc@bbcresearch.com

**In association with**

Holland + Knight, LLP
GCAP Services
The Law Offices of John W. Harris & Associates
Customer Research International

BBC Research & Consulting

# Table of Contents


**ES. Executive Summary**

1. Overall Annual Aspirational DBE Goal ..... ES–1
2. Percentage of the Annual Goal to be Achieved through Neutral Means ..... ES–3
3. Implementation of the Federal DBE Program ..... ES–10
4. Programs Applicable to Locally-funded Contracts ..... ES–11

Summary ..... ES–12

**I. Introduction**

Study Scope ..... I–1
Federal DBE Program ..... I–1
Legal Requirements for MTS Implementation of the Federal DBE Program ..... I–3
Study Team ..... I–5
Organization of the Report ..... I–6

**II. Collection and Analysis of MTS Contract Data**

Collection and Analysis of Prime Contract and Subcontract Data ..... II–1
Geographic Distribution of FTA-funded Contract and Subcontract Dollars ..... II–5
Analysis of FTA-Funded Contracts with and without DBE Goals ..... II–5
Analysis of Locally-funded Contracts ..... II–6

**III. Analysis of MBE/WBE Availability**

Steps in the Availability Analysis ..... III–1
Results of the Base Figure Analysis ..... III–4
MBE/WBE Availability as Inputs to the Disparity Analysis ..... III–7
Further Discussion of Issues in an Availability Analysis ..... III–8

**IV. Summary Utilization and Disparity Analysis for MTS Contracts**

Utilization Analysis ..... IV–1
Disparity Analysis ..... IV–4
Analysis of Statistical Significance of Any Disparities ..... IV–12
Summary ..... IV–14

**V. Exploration of Possible Causes of Any Disparities**

1. Why did MBE/WBE utilization increase on FTA-funded contracts for May 2006 through December 2007? ..... V–1
2. Why is utilization on locally-funded contracts higher than FTA-funded contracts from 2003 through April 2006? ..... V–3
3. Why are disparities greater on FTA-funded contracts than locally-funded contracts? ..... V–5

Summary ..... V–8

# Table of Contents


## VI. Summary

1. Overall Annual Aspirational Goal ..... VI–1
2. Percentage of the Annual Goal to be Achieved through Neutral Means ..... VI–13
3. Implementation of the Federal DBE Program ..... VI–25
4. Programs Applicable to Locally-funded Contracts ..... VI–26

### Appendices

A. Legal Framework and Analysis ..... A–1
B. Summary of Anecdotal Interviews ..... B–1
C. Utilization and Case Study Data Collection ..... C–1
D. Availability Analysis ..... D–1
E. Detailed Disparity Results ..... E–1
F. Entry and Advancement in the Construction and Engineering Industries ..... F–1
G. Business Ownership in the Construction and Engineering Industries ..... G–1
H. Access to Capital for Business Formation and Success ..... H–1
I. Success of Businesses in the Construction and Engineering Industries ..... I–1
J. Description of Data Sources ..... J–1

# SECTION ES.
# Executive Summary

# SECTION ES.
# Executive Summary

The San Diego Metropolitan Transit System (MTS) must implement the Federal Disadvantaged Business Enterprise (DBE) Program to receive U.S. Department of Transportation (USDOT) funds. Recent court decisions and guidance from USDOT have led MTS to reexamine how it implements the Program. On May 1, 2006, MTS discontinued the use of DBE contract goals/good faith efforts for contracts funded by the Federal Transit Administration (FTA).

BBC Research & Consulting conducted this disparity study to assist MTS in making decisions concerning compliance with the Federal DBE Program:[1]

1. Setting an overall annual aspirational goal for DBE participation in FTA-funded contracts;
2. Determining achievement of the annual aspirational goal through neutral means;
3. Identifying specific measures to be used in implementing the Federal DBE Program; and
4. Considering initiatives applicable to its locally-funded contracts (contracts for which the Federal DBE Program does not apply).

## 1. Overall Annual Aspirational DBE Goal

MTS must develop an overall annual aspirational goal for DBE participation in FTA-funded contracts. The Federal DBE Program requires a "base figure analysis" and consideration of any "step 2" adjustments in deriving this annual goal.[2]

**Base figure analysis.** MTS should consider 22.8 percent as the base figure for its overall annual aspirational goal for DBE participation, which exceeds MTS's 1.6 percent overall annual aspirational DBE goal for FFY 2009.[3] MTS included certified DBEs in its calculations (a USDOT-approved methodology). BBC also counted in the base figure minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified, which is recommended by USDOT if such information can be developed.[4] (When only counting certified DBEs, BBC's approach produces a base figure of 4.5%.)

---

[1] MTS joined four Southern California public transportation agencies in this joint study (the Los Angeles County Metropolitan Transportation Authority, Southern California Regional Rail Authority, Orange County Transportation Authority, and San Diego Association of Governments). The study began in December 2007 and will be completed in late 2009 once public transportation agencies and the public have the opportunity to review and comment on the draft report.

[2] Note that the annual aspirational goal differs from the process MTS might use to set any individual contract-specific goals, which would consider the unique aspects of that contract and the availability of DBEs for potential subcontracted work.

[3] Minority- and women-owned firms comprise 38 percent of the 2,480 businesses BBC examined as available for specific types of Consortium agency transportation prime contracts and subcontracts. Because BBC performed the availability analysis on a dollar-weighted basis given the sizes, types and other characteristics of individual contracts, calculation of MBE/WBE availability differs from a simple counting of firms.

[4] Based on information on race/ethnicity/gender ownership and the annual revenue of the firms. The base figure does not include firms that have graduated from the DBE Program or have otherwise had recent certification denials.

Note that the annual aspirational goal could change based on changes in the actual contract opportunities that are available in any given year. Section III of the report describes the base figure analysis.

**Consideration of possible step 2 adjustments.** MTS must consider specific types of information regarding the relative availability of DBEs before finalizing its overall annual aspirational DBE goal.[5] This process is referred to as consideration of a "step 2" adjustment. The adjustment can be downward or upward. BBC's in-depth analysis of each factor outlined in the Federal DBE Program suggests that MTS consider one of the following options concerning a step 2 adjustment.

**Option 1 – Making an upward adjustment at this time.** Over the long-term, there are reasons that MTS might consider a higher overall aspirational goal than the 22.8 percent base figure.

- If MTS were to make an adjustment, it could consider the 23.5 percent figure for DBE participation after adjusting for disparities in business ownership rates (discussed in Section VI of the report).

- Analyses of access to capital and other factors also support an overall annual aspirational goal higher than 22.8 percent.

**Option 2 – Making no step 2 adjustment.** MTS might adopt the 22.8 percent base figure for its overall annual aspirational goal for DBE participation without any step 2 adjustment. The Federal DBE Program does not require agencies to make a step 2 adjustment in the goal-setting process as long as the agency can explain this decision.

**Option 3 – making a downward adjustment at this time.** There are also reasons for a downward step 2 adjustment:

- BBC's estimate of overall DBE participation on FTA-funded contracts for 2003 through 2007 was about 2.4 percent. It appears that many of the minority- and women-owned firms receiving MTS prime contracts and subcontracts were not DBE certified. (Therefore, this statistic may not fully reflect a measure of "current capacity of DBEs to perform work"[6] as it does not include firms that could potentially be certified as DBEs.

MTS might conclude that the 22.8 percent base figure for DBE participation is so much higher than DBE participation of 2.4 percent that it should adjust the goal based on an average of 22.8 percent and 2.4 percent, which is 12.6 percent. This approach is consistent with the averaging of a base figure and past DBE participation in past MTS goals submissions approved by FTA.

[5] See 49 CFR Section 26.45 (d) and Section VI of the disparity study report for a discussion of each factor.

[6] Per 49 CFR Section 26.45 (d)(1)(i).

## 2. Percentage of the Annual Goal to be Achieved through Neutral Means

USDOT requires agencies to meet the maximum feasible portion of the overall annual goal using race-neutral means. Agencies should examine questions listed below when projecting the portion of their overall annual goal to be met through race- and gender-neutral means:[7]

a. What is the participation of DBEs in the recipient's contracts that do not have contract goals?

b. There may be information about state, local, or private contracting in analogous areas where contract goals are not used (e.g., in situations where a prior state/local affirmative action program was ended). What is the extent of participation of minority- or women-owned businesses in programs without goals?

c. What is the extent of race-neutral efforts that the recipient will have in place for the next fiscal year?

d. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?

e. To what extent have DBE primes participated in the recipient's programs in the past?

f. To what extent has the recipient oversubscribed its DBE goals in the past?

The following summarizes BBC's analysis of each question (see Section VI for more details.)

**a. Participation on MTS contracts without goals/good faith efforts program.** MTS discontinued its use of a DBE contract goals/good faith efforts program on May 1, 2006. After May 1, 2006, MTS set "advisory goals" for DBE participation on FTA-funded contracts, but did not require bidders to meet those goals or show good faith efforts.

**Overall utilization of minority- and women-owned firms.** There were 40 FTA-funded contracts from May 2006 through December 2007 within the procurement areas BBC examined in the MTS disparity study. Minority- and women-owned firms (MBE/WBEs)[8] obtained 10 of the 40 FTA-funded contracts, accounting for 80 percent of federal contract dollars during that time period. (There appeared to be no subcontracts for these procurements.)

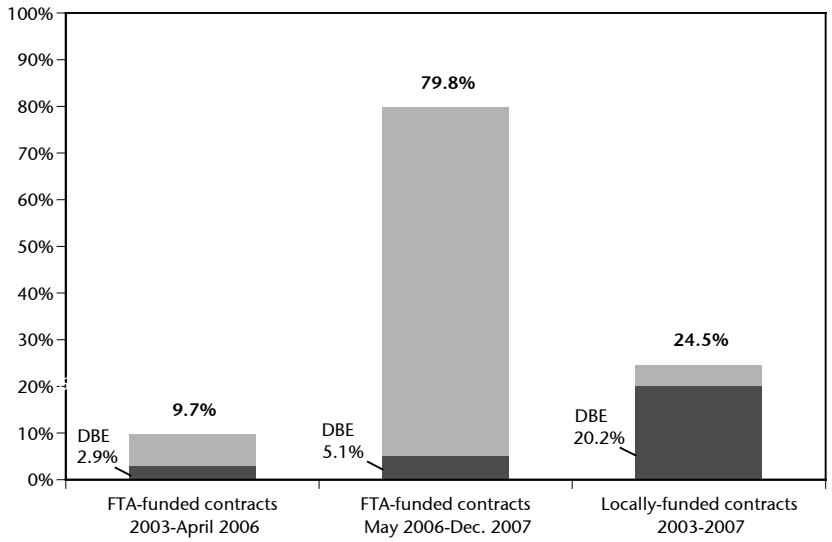
[7] See http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc.

[8] This analysis counts firms as MBE/WBEs if they are certified as MBE/WBEs and/or as DBEs and when they indicate minority or female ownership and are not certified (because they are too large to meet certification criteria, have let certification lapse, have chosen not to be certified, or for other reasons).

BBC examined 57 FTA-funded MTS contracts from 2003 through April 2006. These contracts involved 39 subcontracts, providing a total of 96 contract elements for analysis of the period when MTS used a DBE contract goals/good faith efforts program for some contracts. These contracts totaled $59 million.[9] During this period, about 10 percent of prime contract and subcontract dollars went to minority- and women-owned firms, as shown in Figure ES-1.

BBC also studied MBE/WBE utilization for 38 locally-funded transportation contracts totaling $1.4 million for 2003 through 2007.[10] No subcontracting goals program applied to these contracts. MBE/WBE utilization on locally-funded contracts was about 25 percent. Utilization of certified DBEs was 20 percent for locally-funded contracts. (Sections IV and V of the report discuss results in more detail.)

**Figure ES-1.**
**MBE/WBE share of prime/ subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006, and for locally-funded contracts, 2003–2007**




Note:

Certified DBE utilization.

Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded contracts, 40 for May 2006–Dec. 2007 FTA-funded contracts, and 38 for 2003–2007 locally-funded contracts.

For more detail and results by group, see Figures E-2, E-3 and E-4 in Appendix E.

Source:

BBC Research & Consulting from data on MTS contracts.

[9] In total, BBC identified 538 MTS procurements that were FTA-funded within the study period. These procurements represented $453 million. Only a portion of these procurements were suitable for analysis in the disparity study, as described below. BBC also analyzed 460 MTS procurements totaling $103 million that were locally-funded, of which a portion were suitable for further examination in the study. Race/ethnicity/gender ownership of utilized firms was determined through multiple sources in addition to certification records, including telephone interviews with individual firms. Section II and Appendix C of the report discuss the methodology for the utilization analysis. Appendix E of the report provides a detailed breakdown of utilization by group for specific types and time periods of MTS contracts and subcontracts.

[10] "Locally-funded" contracts are those without USDOT funds. As such, some contracts with state funding could be included.

Figure ES-2 provides utilization results, by group, for MBE/WBE and separately for DBEs. As shown, Hispanic American-owned firms accounted for most of the MBE/WBE utilization.

**Figure ES-2.**
**DBE and MBE/WBE share of prime/subcontract dollars for transportation contracts, by race/ethnicity/gender**

| | Federally-funded contracts | | Locally-funded contracts 2003–2007 | Total 2003-2007 |
|---|---|---|---|---|
| | 2003–April 2006 | May 2006–Dec. 2007 | | |
| **MBE/WBEs** | | | | |
| African American-owned | 0.2% | 0.0% | 0.0% | 0.2% |
| Asian-Pacific American-owned | 1.1 | 0.5 | 3.5 | 1.0 |
| Subcontinent Asian American-owned | 0.0 | 0.0 | 0.0 | 0.0 |
| Hispanic American-owned | 7.8 | 78.3 | 19.4 | 20.0 |
| Native American-owned | 0.0 | 0.0 | 0.9 | 0.0 |
| **Total MBE** | **9.1%** | **78.9%** | **23.8%** | **21.2%** |
| WBE (white women-owned) | 0.7 | 0.9 | 0.7 | 0.7 |
| **Total MBE/WBE** | **9.7%** | **79.8%** | **24.5%** | **21.9%** |
| **DBEs** | | | | |
| African American-owned | 0.2% | 0.0% | 0.0% | 0.2% |
| Asian-Pacific American-owned | 1.0 | 0.5 | 3.5 | 1.0 |
| Subcontinent Asian American-owned | 0.0 | 0.0 | 0.0 | 0.0 |
| Hispanic American-owned | 1.5 | 4.6 | 15.8 | 2.3 |
| Native American-owned | 0.0 | 0.0 | 0.9 | 0.0 |
| **Total MBE** | **2.7%** | **5.1%** | **20.2%** | **3.5%** |
| WBE (white women-owned) | 0.2 | 0.0 | 0.0 | 0.1 |
| White male-owned DBE | 0.0 | 0.0 | 0.0 | 0.0 |
| **Total DBE** | **2.9%** | **5.1%** | **20.2%** | **3.6%** |

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

For more detail, see Figures E-2, E-3, E-4 and E-38 in Appendix E.

Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded, 40 for May 2006–Dec. 2007 FTA-funded, 38 for 2003–2007 locally-funded contracts and 174 for all contracts.

Source: BBC Research & Consulting from data on MTS contracts.

**Dollars going to all subcontractors and MBE/WBE subcontractors.** There were striking differences in subcontracting activity before and after the MTS change in implementation of the DBE contract goals program.

- About 7 percent of the dollars on FTA-funded contract dollars for 2003 through April 2006 were subcontracted. MBE/WBEs obtained 42 percent of these subcontract dollars.

- MTS indicates that no FTA-funded contracts examined in the disparity study for May 2006 through December 2007 involved subcontracts. Also, MTS indicated that there were no subcontracts involved on locally-funded contracts for 2003–2007. MTS did not operate any subcontracting goals program for locally-funded contracts.

**Disparity analysis.** There was considerable underutilization of MBE/WBEs as a whole for 2003–April 2006 when MTS had a DBE contract goals program in place:

- For 2003–April 2006 (when MTS had a DBE contract goals/good faith efforts program in place) there were substantial disparities for WBEs and African American-, Subcontinent Asian American- and Native American-owned firms.

- MBE/WBE utilization for FTA-funded contracts from May 2006 through December 2007 was 80 percent, which is very high and exceeded what would be expected given overall MBE/WBE availability for these contracts (70%). Two contracts for Hispanic American- owned firms accounted for most of this work. There were substantial disparities for WBEs and firms owned by African Americans, Subcontinent Asian Americans and Native Americans.

- Utilization of Asian-Pacific American owned-firms and Native American-owned firms on MTS locally-funded contracts exceeded availability. Utilization of Hispanic American-owned firms was in line with availability for locally-funded contracts. There were substantial disparities for WBEs and African American- and Subcontinent Asian American-owned firms.

Section IV and V of the report as well as Appendix E provide more detail concerning methodology and results.

**b. Information about state, local, or private contracting in analogous areas where contract goals are not used. What is the extent of participation of minority or women-owned businesses in programs without goals?** The five Consortium agencies participating in the Southern California Regional Disparity Study make purchases within the same local transportation contracting market, and operated and then discontinued DBE contract goals/good faith efforts programs. A combined utilization and disparity analysis from BBC's studies for the five non-MTS Consortium agencies (LACMTA, OCTA, SCRRA, SANDAG and MTS) is presented here. (MTS comprises a very small portion of the total Consortium dollars examined.)

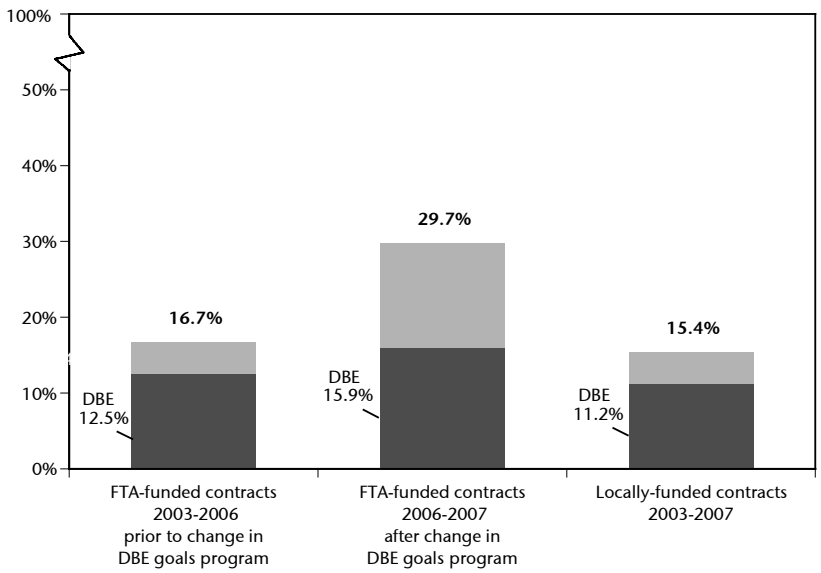
**Overall utilization of minority- and women-owned firms.** Figure ES-4 combines utilization from each of the five Consortium agencies.

- Minority- and women-owned firms obtained 16.7 percent of Consortium agency FTA-funded contract dollars from 2003 through the time that agencies discontinued use of DBE contract goals/good faith efforts programs (which varied from March/April to September 2006).

- After the change in the program, MBE/WBE utilization on FTA-funded contracts was 29.7 percent.

- MBE/WBE utilization for 2003–2007 locally-funded Consortium contracts was 15.4 percent.

**Figure ES-3.**
**MBE/WBE share of Consortium agency prime/subcontract dollars for FTA-funded transportation contracts, before and after change in DBE contract goals, and for locally-funded contracts, 2003–2007**




Note:

Certified DBE utilization.

Number of contracts/subcontracts analyzed is 4,088 for 2003–2006 FTA-funded contracts prior to change in DBE contract goals program, 1,290 for 2006–Dec. 2007 FTA-funded contracts after the change in program, and 2,039 for 2003-2007 locally-funded contracts.

For more detail and results by group, see Figures E-103, 104 and 105 in Appendix E.

Source:

BBC Research & Consulting from data on LACMTA, MTS, OCTA, MTS and SCRRA contracts.

**Disparity analysis.** BBC compared combined MBE/WBE utilization for Consortium agencies (by group) with the level of utilization expected based on a combined availability analysis for Consortium contracts (see Section VI). There was no disparity in Consortium utilization of MBE/WBEs, overall, for FTA-funded contracts during the time when the DBE contract goals/good faith efforts program was in place at each agency. However, there were disparities for WBEs and African American- and Subcontinent Asian American-owned firms.

When examining FTA-funded contracts from the period in 2006 when agencies discontinued DBE contract goals/good faith efforts to the end of 2007, there were no overall disparities for MBE/WBEs but substantial disparities for WBEs and African American- and Native American-owned firms.

For locally-funded Consortium contracts, utilization of MBE/WBEs was about 60 percent of what would be expected based on MBE/WBE availability for these contracts. Disparities were identified for each MBE/WBE group except for African American-owned firms.

**c. Race- and gender-neutral remedies available to MTS.** MTS has implemented a number of race- and gender-neutral remedies and partners with other organizations serving small businesses in Southern California. BBC suggests that MTS continue ongoing activities and consider additional race- and gender-neutral remedies (see Section VI), four of which are highlighted below.

**Subcontracting programs.** The MTS Disadvantaged Business Program includes "encouraging prime contractors to subcontract portions of work that they might otherwise perform themselves."[11] However, there appeared to be no subcontracts involved in FTA-funded contracts from May 2006 through December 2007 or on locally-funded contracts for 2003–2007. To better accomplish this aspect of its program, MTS could consider an initiative similar to the Mandatory Subcontracting Minimum (MSM) provisions used by the City of Los Angeles:

- On contracts that might involve subcontracting, MTS would set a percentage to be subcontracted based on analysis of the work to be performed.

- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive. MTS would need to incorporate flexibility in the program, including the opportunity for the prime contractor to request a waiver.

MTS could also evaluate a small business subcontracting goals program, similar to the DBE contract goals/good faith efforts program except that eligibility criteria would not include race/ethnicity/gender of the firm owner.

Because many MTS procurements are for goods and services that may have few or no subcontracting opportunities, subcontracting programs may only have a small impact on the utilization of small businesses including minority- and women-owned firms.

[11] Disadvantaged Business Enterprise Program of the San Diego Metropolitan Transit System, August 2005, p.13.

**Small business program for prime contractors.** MTS could also consider a small business program that encourages certified small business participation as prime contractors. Efforts could include solicitation of small businesses for bids and extra evaluation points for small business prime consultants responding to Requests for Proposals and Requests for Qualifications.

The State of California and the City of Los Angeles operate small business programs that MTS could evaluate.

**Limited contract sizes.** MBE/WBEs obtained about 32 percent of the dollars of MTS small prime contracts (less than $100,000) from 2003 through 2007, only slightly less than what would be expected based on availability for this work. MTS should continue to evaluate when contracts can be divided into multiple smaller contracts.

**Other MTS neutral measures.** MTS includes a number of additional neutral measures in its Disadvantaged Business Program, including:

- Requiring prompt payment of subcontractors (Metro includes a prompt payment clause in each FTA-funded contract).
- Assuring that bidding and contract requirements facilitate participation by DBEs and other small businesses, including ensuring that bid notices and requests for proposals are available in a timely manner.
- Providing outreach to firms and community organizations to advise them of opportunities.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing, technical assistance and other services.
- Carrying out information and communications programs and other support services to facilitate consideration of DBEs and other small businesses.
- Ensuring distribution of the MTS DBE directory and assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic technology.
- Advise prospective contractors regarding new contracts and the areas for possible subcontracting and of the availability of ready, willing and able subcontractors, including DBE firms, to perform such work.

MTS will also need to further develop a comprehensive electronic bidders list. It might use information on potential bidders developed through this disparity study in adding to this list.

MTS will need to continue these and other neutral efforts per 49 CFR Part 26. There are a number of opportunities for MTS to partner with other agencies and small business organizations in San Diego and other parts of Southern California. MTS can be a co-sponsor and referral source for these initiatives, including mentor-protégé programs and other business development efforts. Fully implementing these initiatives may require MTS to commit additional financial resources to these activities.

**d. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?** When MTS changed its implementation of the goals program, it no longer required contractors to commit to a certain amount of DBE participation.

**e. To what extent have DBE primes participated in the recipient's programs in the past?** MBE/WBEs accounted for 21 percent of prime contract dollars on FTA-funded contracts from 2003 through 2007. Participation of certified DBEs was about 1 percent of FTA-funded prime contract dollars. One Hispanic American-owned firm that was not DBE-certified represents much of the MBE/WBE utilization.

**f. To what extent has the recipient oversubscribed its DBE goals in the past?** BBC independently examined contract awards for MTS FTA-funded contractors for the period from May 2006 through December 2007. As previously shown (see Figure ES-1), minority- and women-owned firms received 80 percent of contract dollars. Only counting certified DBEs, utilization was 5 percent of FTA contract award dollars. (There were no subcontracts identified for these contracts.)

**Overall percentage to be achieved through neutral means.** Through December 2007, MTS's overall utilization of minority- and women-owned firms for FTA-funded contracts after its change in the DBE subcontracting goals program was 80 percent, exceeding the level expected based on availability of MBE/WBEs.

This information suggests that MTS should consider meeting its annual aspirational goal entirely through neutral means, in accordance with 49 CFR Section 26.51.

However, considerable MBE utilization on FTA-funded contracts from May 2006 through December 2007 was with two groups — Asian-Pacific American-owned firms and Hispanic American-owned firms — and substantial disparities persisted for other MBE/WBE groups. MTS should consider how it might meet as much as possible of its annual aspirational goal through neutral means and also address disparities for WBEs and African American-, Subcontinent Asian American- and Native American-owned firms in accordance with federal regulations in 49 CFR Section 26.51. Additional neutral efforts include initiatives discussed on the previous two pages.

### 3. Implementation of the Federal DBE Program

The Federal DBE Program requires MTS to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. In making any policy decision to engage in a remedy that targets DBEs, if it determines such a remedy is needed, MTS should consider this disparity study and additional pertinent information per 49 CFR Part 26.

**Additional neutral efforts.** Additional race- and gender-neutral efforts are discussed above and in Section VI of the report.

**DBE goals/good faith efforts.** If after tracking the effectiveness of neutral remedies MTS considers reinstating DBE contract goals/good faith efforts, it will want to carefully examine which groups exhibit disparities in contracts without the DBE subcontracting goals/good faith efforts program (for example, all groups of DBEs except for Asian-Pacific American-owned firms and Hispanic American-owned firms showed disparities for FTA-funded and locally-funded contracts for 2003 through 2007).

Guidance from the FTA indicates how a local transportation agency would operate any future DBE contract goals program in which eligibility is limited to certain race/ethnic/gender DBE groups.[12] Only DBEs owned by those groups would count toward meeting a DBE contract goal. Other DBEs would still participate in MTS contracting in other ways (e.g., meeting a mandatory subcontracting minimum or potentially participating in a small business prime contractor program). MTS would include all DBE groups when preparing DBE participation reports to FTA. If MTS were to adopt an approach similar to the above example, it would need to request a waiver from USDOT to limit participation in this program component to certain groups.

MTS should also consider whether or not any type of subcontracting goals program would be an effective remedy given the limited subcontracting opportunities it appears to have in its FTA-funded contracts.

**Periodic review/tracking of MBE/WBE as well as DBE utilization.** Ongoing review of program effectiveness is a requirement of 49 CFR Part 26.

MTS needs metrics to track success in addition to those suggested in the Federal DBE Program, including careful tracking of MBE/WBEs (by group) as well as DBE participation in both FTA-funded and locally-funded contracts.

If MTS chooses to pursue a solely race- and gender-neutral implementation of the Federal DBE Program for the immediate future, it should monitor utilization and availability of minority- and women-owned firms, by group. MTS may need to consider adding certain race- and gender-conscious remedies if a solely neutral program is not effective in addressing any disparities in its utilization of certain groups of minority- and women-owned firms on FTA-funded contracts.

### 4. Programs Applicable to Locally-funded Contracts

**Neutral remedies.** MTS could consider applying the neutral remedies explored here to its locally-funded contracts as well as FTA-funded contracts. For example, small business subcontracting and prime contractor programs might be applied, as needed, across areas of MTS contracts.

**Race- and gender-based remedies.** At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits MTS from implementing programs including race, ethnic or gender preferences related to its locally-funded contracts. However, MTS should monitor developments in a case involving San Francisco's implementation of a race- and gender-conscious program for its locally-funded contracts.[13] At the time of this disparity study report, the issues raised in this case were under review by the California Supreme Court.

[12] http://www.fta.dot.gov/documents/March_23_FRN_pdf_(website).pdf.

[13] *Coral Construction, Inc. v. City and County of San Francisco*, 57 Cal.Rptr.3d 781 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007).

## Summary

Minority- and female-owned businesses bidding on MTS contracts received 80 percent of the FTA-funded contract dollars for May 2006 through December 2007, the period after it discontinued use of a DBE contract goals/good faith efforts program. MBE/WBEs bidding on locally-funded contracts obtained 25 percent of these contract dollars. However, MBE/WBE success in obtaining MTS contracts was limited to certain groups of minority-owned firms. There were disparities for women-owned firms and other minority groups.

To maintain its recent success in overall MBE/WBE participation, and attempt to extend opportunities to more MBE/WBE groups, MTS should consider additional race- and gender-neutral remedies that focus on prime contractors and vendors. FTA-funded contracts at MTS appear to have few opportunities for subcontracting, which limits the potential effectiveness of any type of subcontracting goals program.

MTS should also consider a higher overall annual aspirational goal for future DBE participation than the 1.6 percent level used for FFY 2009.

# SECTION I.
# Introduction

# SECTION I.
# Introduction

The Disparity Study Report provides information to assist the San Diego Metropolitan Transit System (MTS) in its future implementation of the Federal Disadvantaged Business Enterprise (DBE) Program. This information will aid MTS as it:

1. Establishes an overall annual aspirational goal for DBE participation in its FTA-funded contracts;

2. Estimates the portion of its overall annual aspirational DBE goal to be met through race- and gender-neutral means and any portion to be met through race- and gender-conscious means;

3. Chooses the specific measures it will apply when implementing the Program; and

4. Identifies specific race/ethnic/gender groups of DBEs eligible for any needed race- and gender-based remedies such as DBE contract goals.

The information is also useful to MTS as it seeks to ensure fairness in its non-federally-funded contracting.

## Study Scope

This Disparity Study examines the transportation contracting industry in Southern California and related MTS contracts and subcontracts. The study focuses on the types of MTS work funded through the Federal Transit Administration (FTA) as well as similar MTS contracts not involving federal funds. It was performed as part of a larger regional disparity study that included:

- Los Angeles County Metropolitan Transportation Authority (LACMTA or "Metro");
- Orange County Transportation Authority (OCTA);
- San Diego Association of Governments (SANDAG); and
- Southern California Regional Rail Authority (SCRRA or "Metrolink").

BBC collectively refers to agencies participating in the Southern California Regional Disparity Study Consortium as "Consortium agencies" or simply "agencies."

## Federal DBE Program

After enactment of the Transportation Equity Act for the 21st Century (TEA-21) in 1998, the U.S. Department of Transportation (USDOT) established a new Federal DBE Program to be implemented by federal aid recipients. MTS was implementing the Federal DBE Program at the beginning of the study period (2003).

**Program elements.** Requirements of the Federal DBE Program are set forth in 49 CFR Part 26. Until May 1, 2006, MTS included DBE contract goals in its implementation of the Federal DBE Program and considered whether or not a bidder met the DBE contract goal or showed good faith efforts to do so when considering award of federally-funded contracts.

In response to a Ninth Circuit Court of Appeals decision involving the State of Washington's implementation of the Federal DBE Program (explained below) and subsequent guidance to federal aid recipients from USDOT, MTS changed its use of DBE contract goals effective May 1, 2006. From May 1, 2006 through December 2007, MTS set advisory goals for DBE participation on FTA-funded contracts, but did not require bidders to meet those goals or show good faith efforts. MTS does not include its overall annual aspirational DBE goal in its bid documents.

MTS does not set contract goals for locally-funded contracts.

**Race/ethnic/gender groups.** Disadvantaged business enterprises (DBEs) are defined in the Federal DBE Program (49 CFR Section 26.5). A DBE is a small business owned and controlled by one or more individuals who are socially and economically disadvantaged. The Federal DBE Program specifies the race, ethnic and gender groups that can be presumed to be disadvantaged as long as they do not exceed firm revenue and personal net worth limits. These groups are:

- Black Americans (or "African Americans" in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.

There is a gross revenue limit (not more than $22,410,000 and lower limits for certain lines of business) and a personal net worth limit ($750,000, not including equity in the business and in personal residence) that firms and firm owners must fall below to be able to be certified as a DBE (49 CFR Subpart D).

In this study:

- The term "DBEs" refers to disadvantaged business enterprises according to the federal definitions in 49 CFR Part 26 that have been certified as such. White male-owned firms that meet the certification requirements in 49 CFR Section 26.5 and are currently certified are included in the definition of DBEs. (Few DBEs are white male-owned firms.)

- "MBEs" and "WBEs" are firms owned and controlled by minorities or women, according to the race/ethnicity definitions listed above, whether or not they are certified or meet the revenue and net worth requirements for certification.

- BBC's term "potentially certified DBEs" refers to minority- and women-owned firms that are or could be certified as DBEs given BBC's information about the size of these firms and their race/ethnicity/gender ownership.

## Legal Requirements for MTS Implementation of the Federal DBE Program

The Federal DBE Program that the federal government promulgated in 1999 responded to the 1995 U.S. Supreme Court decision in *Adarand Constructors, Inc. v. Pena*.[1] The Court held that federal government programs utilizing racial or ethnic classifications are only constitutional if they pass the "strict scrutiny" standard of legal review, which means that the programs serve a "compelling interest" and are "narrowly tailored" to achieve that objective. "Compelling interest" and "narrow tailoring" have a number of components, which are discussed in detail in Appendix A.

**Difference between implementing a federal program and a state or local program.** In *Adarand*, the U.S. Supreme Court applied the same strict scrutiny standard for review to federal programs that the Court had applied in 1989 to state and local governments in *City of Richmond v. J.A. Croson*.[2] After the *Croson* decision, many state and local minority- and women-owned business enterprise programs (non-federal programs) were held to be unconstitutional by the courts. The state and local programs found to be unconstitutional included a State of California construction subcontracting program for minority- and women-owned businesses on state-funded contracts.

**Proposition 209.** Proposition 209, passed by California voters in 1996, precludes government agencies in the state from implementing race and gender preferences related to non-federally-funded contracts. Proposition 209 does not prohibit action that must be taken to establish or maintain eligibility for a federal program, and thus permits continued implementation of federally-required programs.

Appendix A discusses Proposition 209 and summarizes certain key federal court decisions affecting race- and gender-conscious programs implemented by public agencies.

**Requirements for implementing the Federal DBE Program.** As a direct recipient of FTA funds, MTS is required to implement the Federal DBE Program and to narrowly tailor its implementation according to regulations set forth in 49 CFR Part 26. Several of these requirements are discussed below. MTS must:

- Set an overall annual aspirational goal for DBE participation in MTS's federally-funded contracts;
- Examine whether or not the annual DBE goal can be attained solely through neutral measures or whether race- or gender-based measures are needed (and estimate the percentage of the overall annual aspirational DBE goal that will be met through neutral and any race-conscious measures);
- Choose the measures it will apply in an attempt to meet the overall annual DBE goal; and
- Identify the specific race, ethnic and gender groups eligible for any race- or gender-conscious measures such as contract goals.

[1] 515 U.S. 200 (1995).

[2] 488 U.S. 469 (1989).

**Overall annual DBE goal.** Even though the Federal DBE Program outlined in 49 CFR Part 26 includes an overall 10 percent aspirational goal for DBE participation across the nation, state and local governments receiving USDOT funds must set an overall annual DBE goal specific to conditions in their relevant marketplace. The Federal DBE Program requires an agency such as MTS to set an overall annual aspirational DBE goal whether or not its program utilizes DBE contract goals.

**Measures required to attempt to meet the overall annual DBE goal.** The Federal DBE Program requires state and local governments to assess how much of the annual DBE goal can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts such as DBE contract goals. The state or local government must then select specific measures it will use in implementing the Program.

The 2005 Ninth Circuit decision in *Western States Paving Co. v. Washington State DOT* further addresses the steps state and local governments must follow for their implementation of the Federal DBE Program to be constitutional. The ruling applies to any agency implementing the Federal DBE Program in the Ninth Circuit, which includes California.[3]

- The court found that sufficient evidence of discrimination exists nationwide to hold that the Federal DBE Program was constitutional.

- However, the court held that state and local governments are responsible for determining whether or not there is discrimination in the government's transportation contracting industry, and for developing narrowly tailored measures if a need exists, in order to comply with the Federal DBE Program. Narrow tailoring of the program depends on each state or local government evaluating conditions within its own contracting markets and implementing the Federal DBE Program in a way that pertains to those local conditions.

Accordingly, the USDOT has advised state and local agencies that any use of race- or gender-conscious remedies as part of its DBE program must be based on evidence the recipient has concerning discrimination affecting the government's transportation contracting industry:[4]

- The state or local agency determines whether or not there is evidence of discrimination in its transportation contracting industry.

- The USDOT recommends the use of disparity studies to examine whether or not there is evidence of discrimination, and how remedies might be narrowly tailored.

- The USDOT suggests consideration of both statistical and anecdotal evidence. "Disparity analysis," or comparisons of DBE utilization with the relative availability of DBEs to perform the work, is an important part of the statistical information.

- Evidence must be considered for individual race, ethnic and gender groups.

---

[3] *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005)

[4] Questions and Answers Concerning Response to *Western States Paving Company v. Washington State Department of Transportation* [hereinafter DOT Guidance], available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm. (January 2006).

State and local governments in the Ninth Circuit discontinued implementing race- and gender-conscious elements of the Federal DBE Program after the *Western States Paving* decision and subsequent guidance from USDOT, and many have initiated disparity studies.

BBC's disparity studies for Consortium agencies reflect provisions in 49 CFR Part 26, *Western States Paving* and other court decisions, and guidance from USDOT and also consider recommendations for disparity studies by the U.S. Commission on Civil Rights and suggestions made by critics of disparity studies.

**Implementation of the Federal DBE Program for FHWA-funded contracts.** Some Consortium agency contracts utilize Federal Highway Administration (FHWA) funds. FHWA funds are typically administered through the California Department of Transportation (Caltrans), which is responsible for determining how the Federal DBE Program for FHWA-funded contracts will be administered in California. Therefore, BBC did not examine FHWA-funded contracts in the Consortium agency disparity studies. Caltrans' DBE Program requirements for local agencies receiving FHWA funds apply to Consortium agencies.

## Study Team

The study team for the MTS disparity study is:

- BBC Research & Consulting, a Denver-based economic and policy research firm (prime consultant);
- Holland + Knight, LLP, a law firm with offices throughout the United States, including Los Angeles;
- GCAP Services, a research firm with offices in Costa Mesa and Sacramento;
- The Law Offices of John W. Harris & Associates, with offices in Los Angeles, New York, and Sacramento; and
- Customer Research International (CRI), a telephone survey research firm in San Marcos, Texas.

BBC Research & Consulting has overall responsibility for this study and performed most of the required quantitative analyses. Holland + Knight conducted the legal analysis that provides the legal framework for this study. In-depth personal interviews of business owners were performed by the Law Offices of John W. Harris & Associates, Holland + Knight, and GCAP Services. GCAP Services also conducted a detailed review of MTS contracting practices, collected contracting data from MTS offices and helped analyze MTS utilization of minority- and women-owned firms. BBC worked with Customer Research International to conduct telephone surveys with business managers and owners in the transportation contracting industry.

## Organization of the Report

The balance of this report is organized as follows:

- **Section II — Relevant Geographic Market Area and Product Markets.** BBC begins its analysis by defining the relevant geographic market area for the study (determined to be Southern California) and the relevant "product markets," which are the types of construction, engineering and other professional services, and other types of goods and services related to MTS's transit system construction and operations.

- **Section III — Analysis of MBE/WBE Availability and Overall Annual Aspirational DBE Goal.** USDOT requires federal aid recipients to formulate overall annual aspirational goals for DBE participation in federally-funded contracts. Section III of this report presents data pertinent to establishing a "base figure" for its overall annual aspirational DBE goal, and information to assist MTS in considering whether to make a "step 2" adjustment to the overall DBE goal. The base figure is formulated from BBC's consideration of MTS's FTA-funded contracts from 2003 through 2007 and the availability of minority-, women- and majority-owned firms to perform specific types and sizes of these contracts and subcontracts. Analysis related to a possible step 2 adjustment includes quantitative and qualitative information on local marketplace conditions and past participation of DBEs in MTS's FTA-funded contracts.

- **Section IV — Utilization and Disparity Analysis for MTS Contracts.** MTS must decide how much of its overall annual DBE goal can be met through neutral means and how much, if any, through race-conscious measures. Disparity analysis assists MTS in making these decisions. Section IV compares past utilization of minority- and women-owned firms on MTS contracts with DBE contract goals and utilization without DBE goals. BBC also compares utilization of minority- and women-owned firms on these contracts with what would be expected given the relative availability of MBEs and WBEs for this work. This analysis is conducted for each race/ethnic/gender group.

- **Section V — Exploration of Possible Causes of Any Disparities.** In Section V, BBC further explores factors behind any overall disparities in MTS's utilization of firms owned by specific race/ethnic/gender groups. For example, utilization as prime contractors is separated from utilization as subcontractors. BBC examines large versus small contracts and subcontracts, and disaggregates the overall data for construction, engineering, and other goods and services. In addition, BBC presents results of case studies of a random sample of MTS procurements as well as qualitative and quantitative information concerning local marketplace conditions that could explain any overall disparities in MTS contracting.

- **Section VI — Summary of Results.** Section VI of the report outlines certain decisions MTS must make in its future implementation of the Federal DBE Program and summarizes study results relevant to each decision. Study information includes a review of potential program elements.

A number of appendices provide supporting information. Appendices contain detailed discussion of legal background, utilization and availability data collection, additional disparity analyses of MTS contract data, and quantitative and qualitative information on the MTS's transportation contracting marketplace.

# SECTION II.
# Collection and Analysis of MTS Contract Data

# SECTION II.
# Collection and Analysis of MTS Contract Data

Section II describes the procurement areas and the relevant geographic market area defined for the MTS disparity study. BBC also identifies two key time periods for the analysis (periods with and without DBE contract goals on MTS's FTA-funded contracts).

## Collection and Analysis of Prime Contract and Subcontract Data

The BBC team examined MTS prime contracts and subcontracts according to the following guidelines.

- The study period was January 1, 2003 through December 31, 2007.
- Individual procurements of more than $2,500 were examined.
- BBC first focused on FTA-funded contracts. MTS's contract records were used to determine whether or not MTS had treated a contract as FTA-funded.[1]
- BBC determined contract dollars based on dollars at time of contract award.
- Time period of the contract was based on award date.
- BBC examined dollars going to prime contractors and to subcontractors.
    - Subcontract dollars are the dollar amounts committed to subcontractors at time of award.
    - If a contract involved subcontracting, BBC calculated the dollars to the prime contractor as the total contract amount less the dollars listed for subcontractors/suppliers.

In total, BBC identified 538 MTS procurements that were FTA-funded within the study period. These procurements represented $453 million. Only a portion of these procurements were suitable for analysis in the disparity study, as described below. BBC also analyzed 460 MTS procurements totaling $103 million that were locally-funded.

**Procurement areas.** BBC coded Consortium agency work, including MTS contracts and subcontracts, into 80+ specific procurement areas. For example, "electrical work" and "petroleum products" are two procurement areas that were included in the MTS study.

BBC identified the procurement area for a contract or subcontract based on the primary line of work for the contractor or vendor, and in some cases from agency contract descriptions.

[1] In most cases, $1 dollar of FTA funding caused MTS to treat a contract as FTA-funded.

Once each contract and subcontract was coded into one of the 80+ procurement areas, BBC determined the procurement areas to be included in the MTS disparity study.

**Procurements typically not included in a BBC disparity study.** Once total dollars for FTA-funded contracts were aggregated by procurement area, BBC identified and excluded procurements areas that were in any of the following six groups:

- Government, not-for-profit agencies or associations;
- Periodicals, books, software, or other types of purchases that are typically copywrited and produced by one national or international source;
- Real estate or other real property (purchases or leases), legal services (which are often dollars for real property) or financial services/insurance;
- Educational, social or medical services;
- Utilities, broadcast and communications services, and other regulated industries; and
- Travel- and hospitality-related expenditures.

These procurement areas are typically not included in a BBC disparity study. BBC also excluded MTS transit operations contracts, which for Consortium agencies are primarily contracts for labor with the agencies owning the transit equipment and facilities. Contracts with transit operations firms exceeded $250 million for the study period including over $200 million in procurements from Veolia Transportation Incorporated.

**Purchases primarily made from TVMs.** FTA independently implements the Federal DBE Program for transit vehicle manufacturers (TVMs). Transit vehicle manufacturers work directly with FTA to establish their overall annual goals for DBE participation. MTS should not include FTA-funded procurements from TVM firms when developing an overall DBE goal, per 49 CFR Section 26.49. Therefore, MTS purchases (e.g. buses and light-rail vehicles) made primarily from TVMs are not included in this study. For example, the December 2003 purchase of MTS light rail cars from North American Bus Industries for $16 million is excluded from the disparity study.

MTS should continue to require bidders on these types of purchases to comply with FTA's national program for TVMs.

**Areas of relatively small dollar volume.** The Consortium disparity studies focused on procurement areas with the highest aggregate dollars of FTA-funded contracts (individually for each agency and in total across agencies). Goods or services were also included that were highly specific to transit facilities or operations, or were included in other BBC disparity studies that examined Southern California (i.e. the 2009 Metro, OCTA, SANDAG or Metrolink studies, the 2007 Caltrans study or the 2009 San Diego County Regional Airport Authority study).

Unless noted above, procurement areas totaling less than $4 million for MTS were not included in BBC's final analysis of MTS utilization. These smaller procurement areas included automobile, retail and commercial art purchases. In total, these areas account for $11 million in MTS FTA-funded contract dollars over the five-year study period, substantially less than the $69 million of FTA-funded MTS purchases in procurements areas included in the final utilization analysis.

**Procurements made from outside the local area.** BBC examined the relevant geographic market area for MTS and other Consortium agency procurement based on dollars of prime contracts and subcontracts. Contractors and vendors providing construction, engineering, and other services to Consortium agencies are typically located in Southern California, which for purposes of this study consists of the federally-defined San Diego Metropolitan Statistical Area[2] and Los Angeles Consolidated Metropolitan Statistical Area.[3] Firms located in Central or Northern California without Southern California offices receive a relatively small dollar volume of MTS construction, engineering or other services contracts and subcontracts. Figure II-1 shows a map of Southern California as defined in this study.

**Figure II-1.**
**Southern California**

Note: Includes the Los Angeles Consolidated Metropolitan Statistical Area and the San Diego Metropolitan Statistical Area.

Source: BBC Research & Consulting.

[2] Defined by the U.S. Bureau of the Census as San Diego County.

[3] Defined by the U.S. Bureau of the Census as Los Angeles, Orange, San Bernardino, Riverside and Ventura counties.

Types of procurement for consortium agencies that primarily went to firms located outside of Southern California were not examined in the Consortium disparity studies. For example, vehicle parts and supplies are not examined in this study. MTS had $1.4 million in FTA-funded vehicle parts and supplies purchases, over $1 million of which appeared to go to vendors outside Southern California.

**Final procurement areas for MTS analysis.** Figure II-2 lists the 24 procurement areas included in the analysis of utilization and availability of MBE/WBEs for MTS contracts. Together, these procurement areas account for $69 million of MTS FTA-funded contracts from 2003 through 2007.

**Figure II-2.**
**Dollars of MTS prime contracts and subcontracts for procurement areas examined in disparity study, 2003-2007**

| Sub-industry/procurement area | Funding source ($ in thousands) | | |
|---|---|---|---|
| | FTA | Non-FTA | Total |
| **Construction** | | | |
| Heavy construction | $1,985 | $31 | $2,016 |
| Railroad construction | 563 | 49 | 613 |
| Water, sewer, and utility lines | 49 | 0 | 49 |
| Building construction | 1,114 | 19 | 1,133 |
| Elevator installation and repair | 96 | 5 | 101 |
| Electrical work | 757 | 14 | 771 |
| Other building construction | 699 | 9 | 708 |
| Concrete and related products | 6 | 0 | 6 |
| Industrial equipment and machinery | 510 | 0 | 510 |
| Industrial hydraulic equipment | 16 | 18 | 34 |
| Heavy construction equipment rental | 11 | 16 | 26 |
| Transportation signaling | 68 | 10 | 77 |
| Other construction materials | 44 | 0 | 44 |
| Trucking | 126 | 77 | 203 |
| Other construction services | 54 | 14 | 67 |
| **Construction total** | **$6,098** | **$262** | **$6,359** |
| **Engineering and professional services** | | | |
| Engineering | $4,600 | $29 | $4,628 |
| Environmental and transportation planning | 689 | 83 | 772 |
| Construction management | 20 | 0 | 20 |
| Landscape architecture | 14 | 0 | 14 |
| Testing services | 7 | 0 | 7 |
| **Engineering total** | **$5,330** | **$112** | **$5,442** |
| **Other goods and services** | | | |
| Communications equipment | $19,579 | $661 | $20,240 |
| Security services | 25,000 | 0 | 25,000 |
| Cleaning and janitorial services | 5,191 | 249 | 5,440 |
| Vehicle body repair | 7,852 | 84 | 7,936 |
| **Other goods and services total** | **$57,622** | **$994** | **$58,616** |
| **Total** | **$69,049** | **$1,368** | **$70,417** |

Source: BBC Research & Consulting.

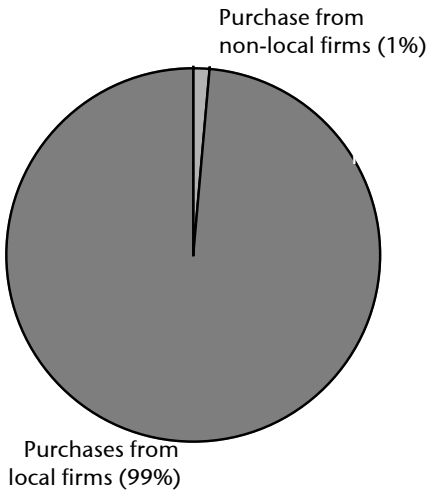
## Geographic Distribution of FTA-funded Contract and Subcontract Dollars

Figure II-3 shows the distribution of contract dollars by firm location after excluding the types of purchases identified above. As shown, 99 percent of contract dollars for MTS's construction, engineering, and other goods and services procurements went to firms with locations in Southern California.

**Figure II-3.**
**Percentage of MTS FTA- and locally-funded prime contract and subcontract dollars awarded to firms located in Southern California, 2003-2007**

Note:
For those procurement areas examined in the MTS utilization and availability analysis.

Source:
BBC Research & Consulting.




## Analysis of FTA-Funded Contracts with and without DBE Goals

BBC's disparity analysis for MTS examines FTA-funded contracts before and after MTS changed its implementation of the Federal DBE Program on April 30, 2006.

**FTA-funded contracts January 1, 2003 through April 30, 2006.** MTS set DBE contract goals on FTA-funded contracts for contracts advertised prior to May, 2006. As part of developing the request for bids or request for proposals, MTS examined all FTA-funded contracts for potential subcontracting opportunities and established DBE participation goals for certain contracts. Bidders had to meet the DBE goals by showing DBE participation as subcontractors or show that they had made good faith efforts to do so.

Larger construction and professional services contracts typically had DBE goals. Some other services contracts had DBE goals, but contracts for goods typically did not.

Each bidder on an FTA-funded contract with a DBE goal needed to submit appropriate program compliance forms at time of bid. The study team analyzed a total of 96 contract elements and purchases in the studied procurement areas (listed in Figure II-2) from this time period, totaling $59 million.

**FTA-funded contracts after April 30, 2006.** For FTA-funded contracts advertised after April 30, 2006, MTS set advisory goals for DBE participation on FTA-funded contracts, but did not require bidders to meet those goals or show good faith efforts. MTS does not include its overall annual aspirational DBE goal in its bid documents for federally-funded contracts. Within the procurement areas BBC studied, there were 40 FTA-funded contract elements (for $12 million) awarded after April 30, 2006.

## Analysis of Locally-funded Contracts

BBC also examined MTS's non-federally-funded contracts if they pertained to the final procurement areas previously discussed in this section. BBC collectively refers to these non-federally-funded contracts as "locally-funded" even though it is possible that they included some state funds. BBC analyzed 38 locally-funded contract elements and purchases in the studied procurement areas totaling $1.4 million.

MTS does not apply any type of formal MBE/WBE or SBE program to locally-funded contracts.

# SECTION III.
# Analysis of MBE/WBE Availability

# SECTION III.
# Analysis of MBE/WBE Availability

BBC analyzed the relative availability of minority- and women-owned firms that are ready, willing and able to perform MTS contracts and subcontracts. Minority- and women-owned firms comprise 38 percent of the 2,480 businesses BBC examined as available for specific types of Consortium agency transportation prime contracts and subcontracts. Because BBC performed the availability analysis on a dollar-weighted basis given the sizes, types and other characteristics of individual contracts, MBE/WBE availability differs for each set of MTS contracts. The availability information is useful for several reasons, including:

- Developing the base figure for MTS's overall annual DBE goal for FTA-funded contracts; and
- Preparing benchmarks to apply in the disparity analysis.

## Steps in the Availability Analysis

The availability analysis was developed through interviews with thousands of firm owners and managers in the Southern California transportation contracting industry and BBC's analysis of about 175 MTS transportation prime contracts and subcontracts. This method of examining availability is sometimes referred to as a "custom census." BBC's summary of the availability analysis focuses on:

- The relevant geographic market area and procurement areas for Consortium agency work;
- The database of available firms; and
- Calculating dollar-weighted availability.

**Relevant geographic market area and procurement areas for agency work.** The availability analysis pertains to MTS's transportation contracting industry. As such, the availability analysis focuses on:

- Firms doing business within the procurement areas selected for the disparity studies for Consortium agencies (as discussed in Section II); and
- Businesses with locations in Southern California.[1]

[1] Availability interviews asked about the geographic area where a firm works. To be included as potentially available for MTS prime contracts and subcontracts, a firm must (a) have a location within the San Diego area or (b) have a location in the Greater Los Angeles area and report working in the San Diego area.

**The database of available firms.** BBC collected information from firm owners and managers to identify firms potentially available for MTS work:

- One portion of the MTS availability database is Southern California transportation construction and engineering firms that BBC contacted as part of the Caltrans Availability and Disparity Study completed in 2007. BBC included businesses from the Caltrans study that (a) had locations in Southern California, (b) reported working within subindustries relevant to MTS contracts, (c) indicated that they were available for local government transportation projects, and (d) worked in the San Diego area. Businesses meeting these criteria were included in the database of companies potentially available for MTS work. (Firms had to also meet other criteria to be available for specific MTS prime contracts or subcontracts of certain types and sizes.)

- Firms identified through the Caltrans study do not encompass each of the procurement areas examined for Consortium agencies. For example, firms providing hydraulic equipment, fare collection equipment and security services are types of subindustries not researched in the Caltrans study. Therefore, a second part of the availability database for MTS was developed through interviews with Southern California firm owners and managers for procurement areas not examined in the Caltrans study. BBC identified firms doing business in these subindustries in Southern California from Dun & Bradstreet business listings and attempted to contact each of these firms to assess their availability for specific types and sizes of Consortium agency contracts and subcontracts. These telephone interviews were conducted in 2008 and early 2009.

- In addition, BBC attempted to identify and contact each firm in the transportation contracting industry in Southern California that Dun & Bradstreet identified as new since the telephone interviews for the Caltrans study.

**Overview of the availability interviews.** In both the Caltrans and Consortium telephone interviews, the study team obtained all business establishment listings under the eight-digit industry codes maintained by Dun & Bradstreet (D&B) that were most pertinent to the procurement areas in that study. BBC then worked with Customer Research International (CRI), which performs telephone interviews throughout the country, to conduct interviews with business owners and managers. The availability interviews asked business owners and managers for information including:

- Qualifications and interest in transportation contracting (or related goods and services) for local agencies;
- Qualifications and interest in work as a prime, a subcontractor or a supplier/trucker;
- Firm specialization;
- The largest contract or subcontract bid on or performed in the past five years;
- Geographic scope of service (e.g., Greater Los Angeles area, San Diego area);
- How long the firm has been in business;
- Race/ethnicity/gender of firm ownership;
- Number of employees in California; and
- Gross revenue.

Firms potentially available for MTS contracts or subcontracts are those that reported they (a) perform types of work relevant to Consortium agency contracts, (b) are qualified and interested in work as a prime contractor or subcontractor for local agencies, (c) have performed or bid on such contracts or subcontracts in the past, and (d) work in the San Diego area.

**Calculating dollar-weighted availability.** Only certain potentially available firms are counted as available for a particular MTS prime contract or subcontract depending on factors including type of work involved and contract size. This represents a "bottom-up" approach to determining availability, as explained below.

BBC examined about 175 MTS contract elements, and the MBE/WBE availability associated with each element, to calculate overall availability. To be counted as available for an individual MTS contract or subcontract, firms must have reported that they perform the type, size and contract role related to the work on that contract element:

1. For each MTS contract element (prime contract, subcontract, supply portion, etc.), BBC determined the type of work, contract role and size of the work.

2. BBC then identified firms in the availability database that report they are qualified and interested in performing that role for the specific type of work for local governments, *and* have bid on or performed work of that size, *and* are available to work in the San Diego area *and* were in business in the year of the contract.

3. BBC counted the relative number of minority- and women-owned firms among all firms available for that specific type of work (e.g., three white woman-owned firms and one African American-owned firm, and 16 majority-owned firms out of 20 firms available to perform that contract element).

4. The study team then translated the numeric availability of firms for a contract element into percentage availability for the contract element (in the above example: WBEs are 3/20ths of available firms, or 15 percent relative availability; African American-owned firms represent 1/20ths of available firms, or 5 percent relative availability).

5. BBC weighted the relative availability for each prime contract and subcontract by the dollars of work corresponding to each contract element.

    - BBC multiplied percentage availability by the dollars associated with each MTS contract element;

    - Added the results across contract elements; and

    - Divided by total dollars for all MTS contract elements to produce a dollar-weighted estimate of overall availability.

The process summarized above was used for both the base figure analysis and to determine relative MBE/WBE availability for a particular set of contracts or subcontracts examined in the disparity analysis. Overall results are presented in the following pages.

## Results of the Base Figure Analysis

BBC classified MTS FTA-funded contracts into one of six groups. As discussed below, only the first three groups were included in the calculations of the overall annual aspirational goal.

**Components included in the base figure analysis.** BBC included the following types of FTA-funded procurements in the base figure analysis:

- Construction, engineering, and other goods and services contracts that were examined in the utilization and availability analyses.
- Similar types of procurements that were not included in the utilization and availability analyses, but that should be incorporated into the goal.
- Types procurements made from national markets or are unique, with limited or no DBE availability (and not studied in the utilization and availability analyses).

**Procurements examined in the utilization and availability analyses.** Section II describes the types of procurements included in the analysis of MBE/WBE utilization and availability in this disparity study. BBC separately portrays the dollars and availability for construction, engineering and related services, and other goods and services in the first three rows of Figure III-1.

Data for each category include the following four columns of Figure III-1:

a. Dollars of FTA-funded contracts for 2003 through 2007.

b. Dollars as a percentage of total contract dollars included in the goal calculation.

c. Percentage availability for potential DBEs, calculated as described previously in Section III.

d. "Component of the goal" calculated by multiplying the value in column (c) by column (b). This weights the availability for a category by the dollars in that category.

The values in column (d) are summed to calculate the base figure for the overall annual aspirational goal.

**Types of procurements made locally that were similar to the procurements examined in the utilization and availability analyses.** BBC did not specifically study each type of routine local procurement made with FTA funds. Some of these types of procurements were relatively small even after BBC totaled the dollars for 2003 through 2007. Other types of procurements were larger but related to general office expenses or other routine operations.

An agency receiving FTA funds would typically still include routine local procurements in its DBE participation reports to FTA. Therefore, BBC included these contract dollars when determining the overall annual aspirational DBE goal. Availability for these contracts was based on the weighted DBE availability for the construction, engineering and other goods and services that BBC researched in the utilization and availability analyses.

The value in column (c) in Figure III-1 for these types of contracts is the weighted average of DBE availability for the types of construction, engineering and other goods and services included in the first three rows of Figure III-1.

**Unique local procurements and types of procurements made from the national market.** The annual goal calculation also incorporates FTA-funded contracts that were specialized procurements made from national markets and unique types of procurements made from Southern California businesses. These procurements were unlike the construction, engineering/professional services and other goods and services procurements discussed above. Sometimes, only a single vendor offered the purchased goods or services. Such procurements were not included in BBC's utilization and availability analyses. Examples include purchases of trade publications, pre-packaged software, computer equipment directly from manufacturers, travel and entertainment, and financial and insurance products. Payments for utilities and communications services are also included in this category of FTA-funded contracts.

Although availability was not studied for these types of procurements, they would typically have very low DBE availability.

For purposes of establishing an overall annual aspirational goal, contract dollars are counted in columns (a) and (b) in Figure III-1 and DBE availability is assumed to be 0 percent (column c of Figure III-1).

**Figure III-1.**
**Calculations of base figure for overall annual aspirational DBE goal**

| | (a) FTA-funded contract dollars 2003-2007 (millions) | (b) Percent of dollars | (c) Availability (potential DBEs) | (d) Components of goal (b)*(c) |
|---|---|---|---|---|
| **Contracts considered in the annual goal** | | | | |
| Construction | $2.6 | 2.3 % | 28.1 % | 0.7 % |
| Engineering/professional services | 8.3 | 7.4 | 21.3 | 1.6 |
| Goods and services | 60.0 | 53.7 | 32.4 | 17.4 |
| Other similar to above contracts | 11.5 | 10.3 | 30.9 | 3.2 |
| Other not similar to above contracts* | 29.4 | 26.3 | 0.0 | 0.0 |
| **Total examined** | $111.8 | 100.0 % | | 22.8 % |
| **Contracts not considered in the annual goal** | | | | |
| Governments, associations and not-for-profit agencies | $10.2 | | | |
| TVM or TVM-related | 54.0 | | | |
| Transit operations contracts | 275.3 | | | |
| **Total FTA-funded contracts** | $451.3 | | | |

Note: BBC Research & Consulting.

**Types of FTA-funded contracts not included in the base figure analysis.** Several types of FTA-funded contracts are not counted when calculating the base figure for the overall annual aspirational DBE goal.

**Contracts with governments, associations and not-for-profit agencies.** As government agencies, associations and not-for-profit agencies are neither DBE- nor non-DBE-owned, associated FTA-funded contracts are not included in the calculations concerning the overall annual aspirational goal.

**Contracts with businesses that participate in the USDOT Transit Vehicle Manufacturers Program.** Purchases of transit vehicles and other TVM-related purchases are not to be included in a transit agency's DBE participation reports to FTA and should not be a part of the overall annual aspirational goal.

**Transit operations contracts.** MTS has not included FTA dollars for transit operations contracts in its recent submissions of overall annual aspirational goals. BBC followed this practice as well, although inclusion of operations contracts appears to be permissible and is done by some transit agencies.

**Base figure for annual aspirational DBE goal.** As shown in Figure III-1, BBC's availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs would receive 22.8 percent of prime contract and subcontract dollars for MTS's FTA-funded transportation contracts if they had the same opportunities as similarly situated majority-owned firms.

**Future use of this information in setting an overall annual aspirational DBE goal.** MTS should consider 22.8 percent as the base figure for its overall annual aspirational goal for DBE participation if the distribution of FTA-funded contracts for the time period that the goal covers is expected to be similar to FTA-funded contracts from 2003 through 2007.

If future FTA-funded contracts are not expected to be distributed like FTA-funded contracts from 2003 through 2007, MTS could:

- Use the DBE availability information provided in Figure III-1, but apply different dollars weights to calculate the base figure (e.g., different weights in column (b) for construction compared with engineering or goods and services); or

- Adjust the dollar weights and the availability percentages if the types of construction or any other type of work is expected to be substantially different than the construction contract types (or other types) included in 2003 through 2007. If so, MTS would make adjustments to both column (b) and column (c) of Figure III-1.

**Comparison of 22.8 percent base figure with FFY 2008/2009 DBE goal.** The base figure presented in Figure III-1 is considerably higher than the MTS's 1.6 percent overall annual aspirational goal for FFY 2009, which MTS determined using a USDOT-approved methodology that is based on information about certified DBEs. In addition to using information about currently-certified DBEs, BBC also used information about MBE/WBEs that potentially could be certified as DBEs in its base figure calculations, which resulted in a higher base figure than MTS's FFY 2009 annual aspirational DBE goal.

When limited to currently-certified DBEs, BBC's methodology produces a base figure of 4.5 percent, which is closer to MTS's FFY 2009 goal. Although determining the base figure using certified DBEs is an approved methodology, USDOT recommends using information that includes potentially-certified DBEs if such data can be developed (as further discussed later in Section III).

MTS can make upward or downward adjustments to the recommended base figure before determining its final overall annual aspirational goal for DBE participation. Section VI of the report presents information MTS might consider in choosing to make such an adjustment.

## MBE/WBE Availability as Inputs to the Disparity Analysis

BBC also developed availability information for minority- and women-owned firms as an input to the disparity analysis. This broader availability analysis counts firms as MBEs (by race/ethnicity) and WBEs whether or not they are or could be certified as DBEs.

Figure III-2 reports dollar-weighted availability by MBE/WBE firms for MTS's FTA-funded contracts for 2003-2007 (including related subcontracts). About 36 percent of combined prime and subcontract dollars on these contracts would be expected to go to MBE/WBEs. White women- and Hispanic American-owned firms account for much of this availability.

**Figure III-2.**
**MBE/WBEs as a percentage of transportation construction and engineering industry firms available for MTS FTA-funded contracts 2003-2007, by race, ethnicity and gender**

Note:
Numbers may not add to total because of rounding.

Source:
BBC Research & Consulting.

| Race, ethnicity and gender | Percent of total |
|---|---|
| African American-owned | 4.8% |
| Asian-Pacific American-owned | 0.7 |
| Subcontinent Asian American-owned | 0.2 |
| Hispanic American-owned | 19.3 |
| Native American-owned | 0.2 |
| **Total MBE** | **25.3%** |
| WBE (white women-owned) | 10.2 |
| **Total MBE/WBE** | **35.5%** |

BBC separately determined dollar-weighted availability for each race/ethnic/gender group for each set of MTS contracts/subcontracts examined in the disparity analysis. A number of tables report MBE/WBE availability and disparity analysis results for MTS contracts and subcontracts in Appendix E. Overall MBE/WBE availability varied from 25 percent to more than 70 percent depending upon the types and sizes of work examined. In general:

- Dollar-weighted MBE/WBE availability is greater for small MTS prime contracts and subcontracts compared with large contract elements.

- MBE/WBE availability is greater for subcontracts than for MTS prime contracts.

The 35.5 percent availability for all MBE/WBEs for MTS's FTA-funded contracts is higher than the 22.8 percent DBE availability BBC suggests as the base figure for the overall annual aspirational goal. BBC's calculation of MBE/WBE availability counts as MBE/WBEs two groups of minority- and women-owned firms not included in the base figure: (a) businesses that have graduated from the Federal DBE Program, and (b) firms that are currently not DBE certified and are likely to be too large to meet certification requirements.

## Further Discussion of Issues in an Availability Analysis

The balance of Section III further discusses:

1. BBC's definitions of MBE/WBEs, DBEs and potential DBEs, where and why each definition was used, and BBC's coding of minority women-owned firms;

2. Other approaches to availability analysis considered by the study team;

3. Relative strengths of the enhanced "custom census" availability approach; and

4. How BBC integrated results of availability interviews completed in the 2007 Caltrans study and the telephone interviews conducted for the Consortium in 2008.

**1. Definitions.** BBC's discussion of terms and definitions used in the availability analysis pertains to the difference between minority- and women-owned firms and certified DBEs, and how BBC coded firms owned by minority women.

**MBE/WBEs, DBEs and potential DBEs.** BBC's availability analysis includes the following definitions:

- "Minority- and women-owned firms" (MBE/WBEs) are firms that are owned and controlled by minorities or women, whether or not they are certified as disadvantaged business enterprises or as MBE/WBEs. BBC follows the definitions of specific minority groups contained in 49 CRF Part 26. Most minority- and women-owned firms doing business in Southern California are not currently certified.[2] The disparity analysis examines MBEs (by race/ethnicity) and WBEs, as explained further below.

- Businesses that are certified as disadvantaged business enterprises ("DBEs") are referred to as such (which means that they are certified as being below revenue and personal net worth limits included in 49 CFR Part 26). Because implementation of the Federal DBE Program requires tracking of DBE utilization, BBC reports certain utilization data based on DBE status of the firm.

- Minority- and women-owned firms that are certified or appear that they potentially could be certified as DBEs are referred to as potential DBEs for purposes of establishing a base figure for the overall annual aspirational DBE goal. Figure III-3 provides additional information on the firms included as potential DBEs.

[2] Of the 934 MBE/WBE firms included in the availability database, 237, or about 25 percent, were certified as DBEs as of spring 2009.

**Figure III-3.**
**Definitions of potential DBEs**

To formulate the overall annual DBE goal, BBC excluded firms that recently graduated from the DBE Program as well as high-revenue minority- and women-owned firms that are not currently DBE certified. Firms that appeared that they could be potentially certified as DBEs based on ownership and revenue were counted in the overall goal. Construction-related firms with annual revenue of less than $10 million and engineering-related firms with annual revenue of less than $5 million were counted as potential DBEs.

These revenue limits are below what USDOT sets as an overall limit ($22,410,000 according to USDOT guidelines as of April 3, 2009) because of lower Small Business Administration size limits for certain disciplines, the revenue size categories in the availability interviews, available D&B size categories, and to account for the fact that owners of very high-revenue firms are more likely to exceed the personal net worth limit of $750,000.

**Analysis of MBE/WBEs, and not just currently-certified DBEs, when examining the base figure for the overall annual aspirational DBE goal.** MTS must set an overall annual aspirational goal for DBE utilization, but many firms that could be certified as DBEs are not currently certified. Consistent with court-reviewed availability analysis in states such as Illinois and Minnesota, BBC analyzes the base figure for the overall DBE goal based primarily on relative availability of minority- and women-owned firms that are potential DBEs, not just those that are currently certified.

Although USDOT allows local agencies to develop overall annual aspirational goals for DBE participation by counting the number of available firms in DBE directories and dividing by total firms available in the local marketplace, its "Tips for Goal-Setting in the Disadvantaged Business Enterprise Program" identifies the concern that a DBE directory may undercount potential DBEs in a local market area.[3] USDOT recommends that local agencies consider going beyond the directory of certified DBEs to include minority- and women-owned firms that may be available for agency contracting. Tips for Goal-Setting states that firms potentially certified as DBEs be included in the base figure analysis (see Section II of Tips for Goal-Setting). BBC's approach to setting the base figure is also consistent with methods approved in *Sherbrooke Turf*[4] and in *Northern Contracting*, which favorably refers to and cites Tips for Goal-Setting.[5] (See Appendix A of this report for a discussion of these and other cases.)

When considering minority- and women-owned firms that are not currently DBE certified in the base figure for the overall annual aspirational goal, BBC excludes firms that have graduated from the DBE Program or otherwise been denied DBE certification. BBC also excludes MBEs and WBEs with revenue that would place them near the revenue ceiling for DBE certification. These steps are consistent with USDOT's instructions in Part G of Tips for Goals Setting.

**Disparity analysis for MBE/WBEs, not DBEs.** Analysis of utilization and availability of minority- and women-owned firms (by race/ethnicity/gender) allows one to analyze whether or not there are disparities affecting minority- and women-owned firms. In other words, the possibility that race or gender discrimination affects utilization of firms is analyzed by comparing outcomes for firms based on the race/ethnicity/gender of their ownership, not certification status. Firms may be discriminated

[3] USDOT Tips for Goals Setting in the Disadvantaged Business Enterprise Program. http://www.osdbu.dot.gov/DBEProgram/tips.cfm.

[4] *Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road*, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

[5] *Northern Contracting, Inc. v. Illinois*, 473 F.3d 715 (7th Cir. 2007) at 723.

against because of the race or gender of the business owner regardless of whether that owner has applied for DBE certification.

Furthermore, analysis of whether or not firms face disadvantages based on the race/ethnicity/gender of the firm owner counts the most successful, highest-revenue minority- and women-owned firms in the statistics for all minority- and women-owned firms. A disparity analysis focusing on DBEs would improperly compare outcomes for certified DBEs (by definition, "economically disadvantaged" minority- and women-owned firms) with all other firms (combining majority-owned firms with very successful firms owned by minorities and women). One might find disparities for any group of firms for which membership is limited to low-revenue firms.[6]

Finally, 49 CFR Part 26 allows certification of white male-owned firms as DBEs. Disparity analysis based on DBEs is not purely an analysis of disparities by race/ethnicity and gender.

**Coding of minority women-owned firms.** In the Consortium disparity studies, BBC combines firms owned by minority women and firms owned by minority men into "minority-owned firms." "WBEs" are firms owned by white women. BBC's rationale is discussed in Figure III-4.

**Figure III-4.**
**Coding of firms owned by minority women**

Firms owned by minority women present a challenge in coding for purposes of both the availability analysis and the utilization analysis. BBC considered four options for coding and analysis of firms owned by minority women:

a. coding these firms as both minority- and women-owned;

b. creating a unique group of minority female-owned firms;

c. grouping minority female-owned firms with all women-owned firms; and

d. grouping minority female-owned firms with the relevant race/ethnic group.

BBC chose not to code the firms as both women-owned and minority-owned to avoid potential double-counting when reporting total MBE/WBE utilization and availability. Dividing each race/ethnic group into firms owned by men versus women (e.g., African American male-owned firms, African American female-owned firms, etc.) was also unworkable for purposes of the disparity analysis. Some minority groups had utilization and availability so low even when combining men and women that further disaggregation made it more difficult to interpret results.

After rejecting the first two options, BBC then considered whether to group minority female-owned firms with the relevant minority group or with all women-owned firms. BBC chose the former — to group African American women-owned firms with all African American-owned firms, etc. "WBE" in this report refers to white women-owned firms. Evidence of discrimination against white women-owned firms should be considered evidence of discrimination against women of any race or gender. This definition of WBEs also gives Consortium agencies information to answer questions that often arise pertaining to utilization of white women-owned firms such as whether a disproportionate share of work goes to firms owned by white women.

[6] An analogous situation concerns analysis of possible wage discrimination. A disparity analysis that would compare wages of minority employees to wages of all employees should include both low- and high-wage minorities in the statistics for minority employees. If the analysis removed high-wage minorities from the statistics for minorities, any comparison of wages between minorities and non-minorities would likely show disparities in wage levels.

**2. Other approaches to availability that the study team considered.** BBC explored other approaches to developing a database of firms available for MTS contracts before deciding to use information collected through interviews of local businesses. For example, MTS collects information on potential bidders, but these data do not provide all of the information BBC uses to analyze firm characteristics in the availability analysis.

**3. Strengths of BBC's enhanced "custom census" approach.** Some of the relative strengths of a custom census approach as used in the Consortium disparity studies are summarized in Figure III-5. How BBC examined specific factors in determining whether or not a firm was available for a specific contract element is further discussed below.

**Figure III-5.**
**Strengths of a "custom census" approach**

Federal courts have reviewed and upheld "custom census" approaches to availability that begin with D&B data. The study team's methodology for analyzing MBE/WBE availability took the previous court-reviewed custom census approach as a starting point and added several layers of additional screening when determining firms available for transportation contracting work.

For example, the BBC analysis includes discussions with individual firms about interest in local government work, contract role and geographic location of their work, items not included in the court-reviewed availability analyses. BBC also analyzes the sizes of contracts and subcontracts that firms have performed or bid on in the past.

**Specialization of work.** The USDOT suggests considering the availability of firms based on their ability to perform specific types of work. The example USDOT gives in Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program is as follows: If 90 percent of an agency's contracting dollars is spent on heavy construction and 10 percent on trucking, the agency would calculate the percentage of heavy construction firms that are MBEs or WBEs and the percentage of trucking firms that are MBEs or WBEs, and weight the first figure by 90 percent and the second figure by 10 percent when calculating overall MBE/WBE availability.[7] BBC examines more than 30 different areas of specialization ("procurement areas" or "subindustries") in the Consortium disparity studies.

**Qualifications and interest in prime contractor and subcontractor work.** Although not a requirement in the Federal DBE Program (and not done by the Illinois Department of Transportation in the information reviewed by the Seventh Circuit in *Northern Contracting*), BBC collected information on whether firms reported qualifications and interest in working as a *prime contractor* and as a *subcontractor*. In BBC's availability analysis, only firms qualified and interested in prime contracts are counted as available for prime contracts. Firms reporting qualifications and interest in subcontracts are counted as available for these contract components. Some firms reported qualifications and interest in both contract roles, and are counted as available for either role.

**Size of contract or subcontract element.** In counting available firms, BBC also considered whether a firm had previously worked or bid on a project of equivalent size (in dollars) to the specified contract or subcontract element. BBC's approach is consistent with guidance from the U.S. Court of Appeals for the Federal Circuit regarding capacity of firms to perform different sizes of contracts (see *Rothe Development Corp. v. Department of Defense*).[8]

[7] Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program, http://osdbu.dot.gov/?TabId=133.

[8] *Rothe Development Corp. v. U.S. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).

**Contract date.** To be counted as available for a contract element, a firm must have been in business during or prior to the year in which the contract began. When interviewees could not recall or did not report an establishment date, and other data on firm establishment date were not available, the firm was counted has having been established prior to the 2003-2007 study period.

**4. Integration of Caltrans and Consortium telephone interviews.** In both the Caltrans and Consortium availability analyses, BBC obtained all D&B listings for business establishments identified under the eight-digit industry codes maintained by D&B that the study team determined to be most pertinent to the procurement areas included in the disparity analysis.

In the Caltrans study, subindustries pertained to the types of FHWA- and state-funded transportation construction and engineering contracts awarded by Caltrans or local agencies using FHWA or state funds.

- Some of the procurement areas selected for Consortium agencies are the same procurement areas included in the Caltrans study. Therefore, BBC included a subset of firms interviewed in the Caltrans study as available for certain types of MTS work. Only firms with locations in Southern California that performed work in the San Diego area, reported that they had performed or bid on work for local governments (and were interested in future local government work), and met other detailed criteria were included in the pool of firms considered potentially available for MTS and other Consortium agency contracts.

- For the subindustries included in the Caltrans analysis, BBC identified newly-established businesses in Southern California since the time of the Caltrans study. These new establishments include firms located outside Southern California that opened offices in Southern California since the time of BBC's availability analysis for Caltrans.

A number of procurement areas examined in the Consortium disparity studies were not included in the Caltrans study. For these procurement areas:

- BBC identified the eight-digit subindustry codes most pertinent to Consortium agency FTA-funded contracts and subcontracts.

- BBC obtained a list of firms from D&B that had locations in Southern California.

The study team conducted these telephone interviews in late 2008 and early 2009.[9]

[9] BBC also sent interview forms via fax and e-mail to firms that had requested either type of communication.

# SECTION IV.
# Summary MBE/WBE Utilization and Disparity Analysis for MTS Contracts

# SECTION IV.
# Summary of Utilization and Disparity Analysis for MTS Contracts

The Federal DBE Program requires federal aid recipients to determine the percentage of the overall annual DBE goal that can be achieved through neutral means and the percentage, if any, to be achieved through race- and gender-based measures.

One way of examining what can be achieved through neutral means is to analyze relative utilization of minority- and women-owned firms on locally-funded transportation contracts, which do not have DBE contract goals. Certain FTA-funded contracts can be reviewed as well — MTS discontinued setting DBE contract goals in May 2006.

**Figure IV-1.**
**Defining and measuring "utilization"**

"Utilization" of minority- and women-owned firms refers to the share of contract dollars going to these MBEs and WBEs. BBC reports results for both certified DBEs (firms certified as disadvantaged business enterprises in the year of the specific contract), and for all minority- and women-owned firms. BBC also examines results by race/ethnic/gender group.

Utilization is expressed as a percentage of prime contract and subcontract *dollars*. ("Prime contract dollars" are total contract dollars less the money identified as going to subcontractors.) For example, WBE utilization of 5 percent means that 5 percent of the contract dollars examined went to women-owned firms. Expressed another way, 5 cents of every contract dollar went to WBEs.

Information concerning utilization of minority- and women-owned firms is useful on its own, but is even more instructive when compared with a benchmark for the level of utilization expected given relative availability of minority- and women-owned firms for a particular set of contracts. BBC introduces this "disparity analysis" at the end of this section of the report.

## Utilization Analysis

As outlined in Figure IV-1, "utilization" of minority- and women-owned firms refers to the percentage of contract dollars going to MBE/WBEs. BBC examined utilization of minority- and women-owned firms as prime contractors and subcontractors in MTS transportation contracts. The study period was 2003 through 2007.

BBC's analysis of MBE/WBE utilization goes beyond what MTS currently reports to the USDOT:

- In addition to utilization of certified DBEs, BBC examined utilization of minority- and women-owned firms including firms that are too large to be certified as DBEs and those that have never sought DBE certification. (Reasons for studying MBE/WBEs including those not currently certified as DBEs are discussed in Section III.) The disparity analysis performed at the end of this section focuses solely on minority- and women-owned firms, not DBE-certified firms.

- The study team collected data on subcontractor utilization in a consistent fashion for DBEs, MBE/WBEs and majority-owned firms to be able to accurately report the share of subcontract dollars that went to DBE and MBE/WBE firms for sets of contracts with and without DBE contract goals. Data collection procedures are summarized in Section II and explained in greater detail in Appendix C.

**Federally-funded transportation contracts when DBE goals/good faith efforts program was in place.** Prior to moving to an all race- and gender-neutral implementation of the Federal DBE Program, MTS was setting DBE contract goals for FTA-funded contracts — prime contractors bidding on MTS projects would need to include DBE participation at a level to meet the goals or show good faith efforts to do so. MTS could also set a 0 percent DBE goal on a FTA-funded contract.

BBC examined 57 FTA-funded MTS contracts from 2003 through April 2006. These 57 FTA-funded contracts involved 39 subcontracts, providing a total of 96 contract elements for analysis of the period when MTS set DBE contract goals. These contracts totaled $59 million. During this period, about 10 percent of prime contract and subcontract dollars went to minority- and women-owned firms.

Figure IV-2 portrays DBE and MBE/WBE utilization on FTA-funded contracts before and after May 1, 2006. DBE utilization is shown in the bottom portion of each bar. The difference between DBE utilization and total MBE/WBE utilization (the statistic shown on top of the bar) corresponds to MBE/WBEs that were not certified as DBEs. For example, from 2003 through April 2006, BBC found that about 3 percent of FTA-funded contract dollars went to firms certified as DBEs. About 7 percent of the contract dollars went to MBE/WBEs that were not certified as DBEs.

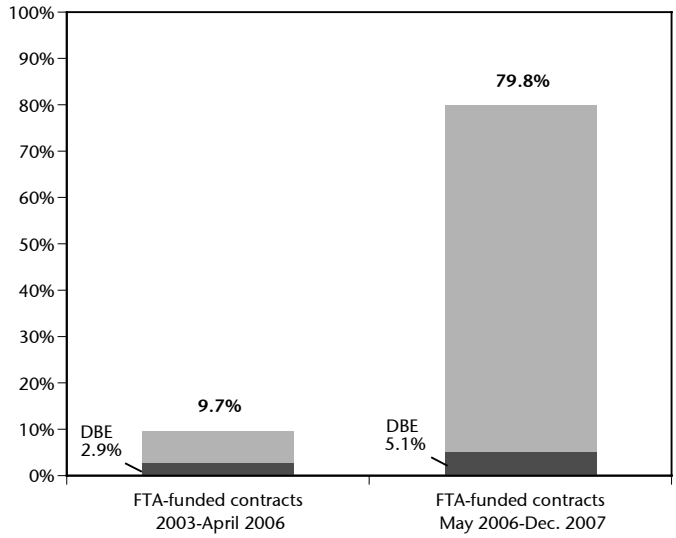
**Federally-funded contracts May 2006 through December 2007.** MTS changed its implementation of the Federal DBE Program in May 2006. There were 40 FTA-funded contracts from May 2006 through December 2007 within the procurement areas BBC examined in the MTS disparity study. No subcontracts were identified for these procurements.

MBE/WBEs obtained 10 of the 40 FTA-funded contracts for May 2006 through December 2007, accounting for 80 percent of federal contract dollars during that time period. As shown in Figure IV-2, nearly all of the FTA-funded contract dollars that MBE/WBEs received after April 2006 went to firms that that were not certified as DBEs. Because the data for May 2006 through December 2007 may represent somewhat different types of work than the earlier time period, one must exercise caution in drawing any conclusions from MBE/WBE utilization before and after May 1, 2006.

**Figure IV-2.**
**MBE/WBE share of prime/ subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006**

Note:
Certified DBE utilization.
Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded contracts and 40 for May 2006–Dec. 2007 FTA-funded contracts.
For more detail and results by group, see Figures E-2 and E-3 in Appendix E.

Source:
BBC Research & Consulting from data on MTS contracts.



**DBE and MBE/WBE utilization on locally-funded contracts.** BBC studied MBE/WBE utilization for 38 locally-funded transportation contracts totaling $1.4 million for 2003 through 2007.[1] Based on MTS information, there were no subcontracts identified for these procurements.

Figure IV-3 displays MBE/WBE utilization on locally-funded contracts and on FTA-funded contracts prior to May 2006. MBE/WBE utilization on locally-funded contracts was about 25 percent, considerably higher than MBE/WBE utilization for FTA-funded contracts with DBE goals. Utilization of certified DBEs was 20 percent for locally-funded contracts. As explained later in this section of the report, MTS locally-funded contracts tend to be of different types and sizes than FTA-funded contracts, which affects opportunities for MBE/WBE participation.

**Figure IV-3.**
**MBE/WBE share of prime contract/subcontract dollars for transportation contracts, FTA vs. local funding**

Note:

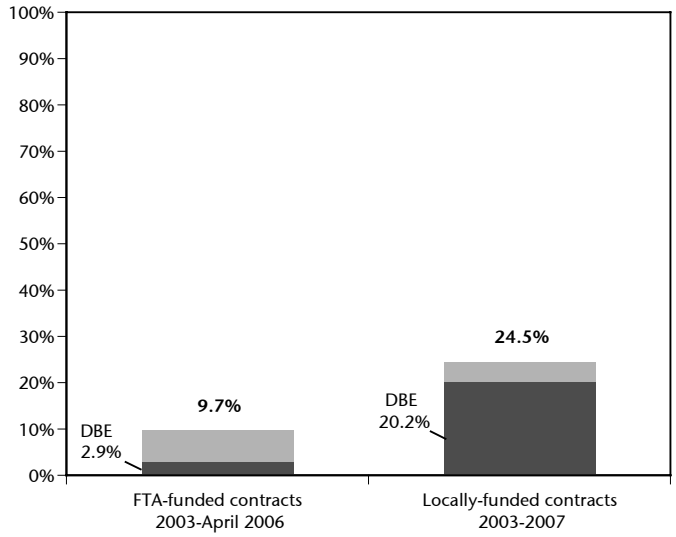
Certified DBE utilization.

Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded contracts and 38 for 2003–2007 locally-funded contracts.

For more detail and results by group, see Figures E-2 and E-4 in Appendix E.

Source:

BBC Research & Consulting from data on MTS contracts.




**Utilization of firms by race and gender group.** Among MBE/WBEs, Hispanic American-owned firms received most of the MBE/WBE prime/subcontract dollars on MTS contracts examined in the disparity. WBEs (white women-owned firms) received less than 1 percent of the contract dollars. African American-owned firms and Native American-owned businesses also obtained a small volume of MTS contract dollars. Only one small subcontract went to a Subcontinent Asian American-owned firm (utilization rounds to 0.0%).

[1] "Locally-funded" contracts are those without USDOT funds. As such, some contracts with state funding could be included.

Figure IV-4 provides utilization results for MBE/WBEs and separately for DBEs.

**Figure IV-4.**
**DBE and MBE/WBE share of prime/subcontract dollars for transportation contracts, by race/ethnicity/gender**

| | Federally-funded contracts | | Locally-funded contracts 2003–2007 | Total 2003-2007 |
|---|---|---|---|---|
| | 2003–April 2006 | May 2006–Dec. 2007 | | |
| **MBE/WBEs** | | | | |
| African American-owned | 0.2% | 0.0% | 0.0% | 0.2% |
| Asian-Pacific American-owned | 1.1 | 0.5 | 3.5 | 1.0 |
| Subcontinent Asian American-owned | 0.0 | 0.0 | 0.0 | 0.0 |
| Hispanic American-owned | 7.8 | 78.3 | 19.4 | 20.0 |
| Native American-owned | 0.0 | 0.0 | 0.9 | 0.0 |
| **Total MBE** | **9.1%** | **78.9%** | **23.8%** | **21.2%** |
| WBE (white women-owned) | 0.7 | 0.9 | 0.7 | 0.7 |
| **Total MBE/WBE** | **9.7%** | **79.8%** | **24.5%** | **21.9%** |
| **DBEs** | | | | |
| African American-owned | 0.2% | 0.0% | 0.0% | 0.2% |
| Asian-Pacific American-owned | 1.0 | 0.5 | 3.5 | 1.0 |
| Subcontinent Asian American-owned | 0.0 | 0.0 | 0.0 | 0.0 |
| Hispanic American-owned | 1.5 | 4.6 | 15.8 | 2.3 |
| Native American-owned | 0.0 | 0.0 | 0.9 | 0.0 |
| **Total MBE** | **2.7%** | **5.1%** | **20.2%** | **3.5%** |
| WBE (white women-owned) | 0.2 | 0.0 | 0.0 | 0.1 |
| White male-owned DBE | 0.0 | 0.0 | 0.0 | 0.0 |
| **Total DBE** | **2.9%** | **5.1%** | **20.2%** | **3.6%** |

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.
For more detail, see Figures E-2, E-3, E-4 and E-38 in Appendix E.
Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded, 40 for May 2006–Dec. 2007 FTA-funded, 38 for 2003–2007 locally-funded contracts and 174 for all contracts.

Source: BBC Research & Consulting from data on MTS contracts.

## Disparity Analysis

Interpreting any differences in MBE/WBE utilization for contracts with and without goals is difficult because the types and sizes of contracts and subcontracts may differ. Also, utilization of MBE/WBEs may be below what would be expected even with DBE goals in place.

The following disparity analysis controls for differences in types and sizes of prime contracts and subcontracts and how these factors affect relative availability of minority- and women-owned firms for a specific set of contracts. If disparities exist, disparity analysis helps to identify the types of contracts and subcontracts and the race/ethnicity/gender groups showing disparities.

**Methodology.** BBC compared percentage utilization of minority- and women-owned firms by race/ethnicity/gender with the share of contract dollars that would be expected to go to minority- and women-owned firms based on BBC's availability analysis.

**Example of a disparity analysis table.** The balance of this section of the report, and the disparity results presented in the sections that follow, are based on the detailed disparity tables found in Appendix E. Therefore, it is useful to describe the detailed analysis from which BBC draws results.

Figure IV-5 on page IV-7 presents an example of a disparity table from Appendix E (it is labeled Figure E-2 in Appendix E). This disparity table pertains to MTS FTA-funded contracts awarded for 2003 through April 2006. It includes dollars for prime contractors and subcontractors. The parameters of the set of contracts being examined are noted in the heading of each table. Appendix E contains similar tables for different sets of contract elements. Each set of contract elements is for a specific:

- Funding source (all funding sources, FTA-funded or locally-funded);
- Type of work (combined contracts, all construction-related, all engineering-related, and other goods and services);
- Time period, which is how BBC knows whether or not the DBE contract goals program was in operation; and
- Contract role (combined prime/sub, only prime contracts, and only subcontracts).

Certain analyses focus on small contracts when noted. The final table in Appendix E presents availability information limited to potential DBEs (MBE/WBE firms that have not graduated from the DBE Program and did not appear to have revenue exceeding the size limits for DBE certification).

**Utilization.** Each of the disparity tables includes the same columns and rows, as discussed below.

- Column (a) of the table notes the number of prime contracts and subcontracts in the set of contracting data under examination (in this case, 96 total contracts and subcontracts).
- Column (b) identifies the dollars examined in the set of contract elements. Because "prime contract dollars" refers to the dollars retained by the prime contractor after subtracting subcontract dollars, the combined prime/subcontract analyses equals the total contract amounts. Dollars are reported in thousands. This disparity table examines contract dollars totaling $58,692,000.
- Column (c) provides dollars of utilization by group after pro-rating any money going to firms identified as MBEs for which specific race/ethnicity was not available (see footnote on Figure IV-5). In this disparity table, there were no contract elements awarded to MBE firms for which race/ethnicity could not be determined.
- Column (d) portrays relative utilization on a percentage basis. Each percentage in column (d) is calculated by dividing dollars going to that group in column (c) by the total dollars in the set of contracts or subcontracts as shown in row (1) of column (c).

Figure IV-5 also has rows for each firm type:

- "All firms" in row (1) pertains to combined majority-, minority- and women-owned firms.
- "MBEs" refers to all minority-owned firms, whether or not they are DBE-certified.
- "WBEs" are white women-owned firms.
- Data for individual minority groups add up to the total for MBEs (in some cases, numbers may not perfectly add due to rounding). Note limitations on race/ethnicity information sometimes mean that totals for Asian American-owned firms cannot always be fully disaggregated into Asian-Pacific American-owned firms and Subcontinent Asian American-owned firms.

The bottom half of Figure IV-5 reports utilization for firms that were certified as DBEs. BBC included a row for white male-owned DBEs, though no such DBE-certified firms appeared to have received MTS contracts or subcontracts examined in this study. DBE utilization data reported in the bottom half of Figure IV-5 were prepared independently from MTS and will not match DBE utilization reports prepared by MTS.

**Relative availability.** BBC developed an estimate of relative availability of firms for each race/ethnicity/gender group following the procedures described in Section III. Availability results, represented as a percentage, provide a benchmark with which to evaluate relative utilization for that group for a particular set of contracts. BBC separately calculated relative availability for each group and set of contracts and subcontracts.

Column (e) of Figure IV-5 reports relative availability for this disparity table:

- Based on the types of work involved in the prime contracts and subcontracts included in the Figure IV-5 analysis, plus the sizes of these contract elements and their geographic location, BBC estimated that 28.4 percent of FTA-funded contract dollars from 2003 through April 2006 would be expected to go to minority- and women-owned firms after considering each firm's specialization, interest and qualifications in prime versus subcontract work, geographic reach and bid capacity of firms to perform this work (and whether or not the firm was in business in the year of the contract).
- This result can be found in row (2) of column (e) in Figure IV-5.

**Figure IV-5.**
**MBE/WBE utilization, availability and disparity analysis for prime contracts/subcontracts on FTA-funded transportation contracts, 2003-April 2006**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 96 | $58,692 | $58,692 | | | | |
| (2) MBE/WBE | 33 | $5,721 | $5,721 | 9.7 | 28.4 | -18.7 | 34.3 |
| (3) WBE | 11 | $401 | $401 | 0.7 | 7.1 | -6.4 | 9.7 |
| (4) MBE | 22 | $5,321 | $5,321 | 9.1 | 21.4 | -12.3 | 42.4 |
| (5) African American-owned | 3 | $129 | $129 | 0.2 | 5.8 | -5.6 | 3.8 |
| (6) Total Asian American-owned | 7 | $638 | $638 | 1.1 | 1.1 | 0.0 | 98.9 |
| (7) Asian-Pacific American-owned | 6 | $635 | $635 | 1.1 | 0.8 | 0.3 | 131.6 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.3 | -0.3 | 1.8 |
| (9) Hispanic American-owned | 12 | $4,554 | $4,554 | 7.8 | 14.2 | -6.5 | 54.5 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.2 | -0.2 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 16 | $1,708 | $1,708 | 2.9 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 0.2 | | | |
| (14) Minority-owned DBE | 12 | $1,609 | $1,609 | 2.7 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 4 | $589 | $589 | 1.0 | | | |
| (17) Asian-Pacific American-owned DBE | 4 | $589 | $589 | 1.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 7 | $902 | $902 | 1.5 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Notes: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

Source: BBC Research & Consulting Disparity Analysis.

**Differences between utilization and availability.** The first step in analyzing whether there was a disparity between the relative utilization of a particular group and its relative availability is to subtract percentage utilization from percentage availability.

- As reported in row (2), column (f) of Figure IV-5, utilization was 18.7 percentage points below availability.

It is sometimes difficult to interpret absolute differences between relative utilization and relative availability, especially when utilization and availability are very small. Therefore, BBC also calculated a "disparity index," which divides percentage utilization by percentage availability and multiplies the result by 100. An index of "100" means that there is "parity" between relative utilization and availability for a particular group. An index below 100, especially below 80, may indicate a substantial disparity.

- Column (g) in the disparity tables provides the disparity index for each group. For example, the disparity index of 34 means that overall MBE/WBE utilization for FTA-funded contracts was considerably lower than what would be expected given the relative availability of minority- and women-owned firms to perform that work.

Note that all percentages in the disparity tables were rounded to the nearest tenth of 1 percent after making all calculations. Percentages correctly add and subtract, even though the rounding may make actual sums appear to differ by one tenth of 1 percent. In addition, the disparity index is derived from the detailed data for percentage utilization and availability before any rounding.

**Results when disparity indices are very large or when availability is zero.** BBC applied the following rules when the disparity indices calculated were exceedingly large or could not be calculated because no firms were identified as available for the contracts under examination:

- When BBC's calculations showed a disparity index exceeding 200, BBC reported an index of "200+."
- When there was no utilization and 0 percent availability for a particular group for a set of contracts, BBC reported "parity" between utilization and availability (indicated by a disparity index of "100").
- When BBC identified utilization for a group but 0 availability (which could occur for many reasons, including the fact that one or more utilized firms were out of business by the time of BBC's availability survey), BBC reported a disparity index of "200+."

The DBE utilization statistics at the bottom of Figure IV-5 are provided as reference. BBC did not conduct disparity analyses for certified DBEs for the reasons described in Section III.

**Results.** Disparity analysis results shown in Figure IV-5 reflect the influence of DBE contract goals. Any lack of disparity for a particular MBE/WBE group could suggest that the DBE contract goals program was effective in increasing utilization for that group.

The information presented in the balance of this report section, as well as Section V, explores (a) whether or not there would be disparities in MTS's utilization of MBE/WBEs absent a DBE goals program and (b) why any disparities between utilization and availability for a specific group may be occurring.

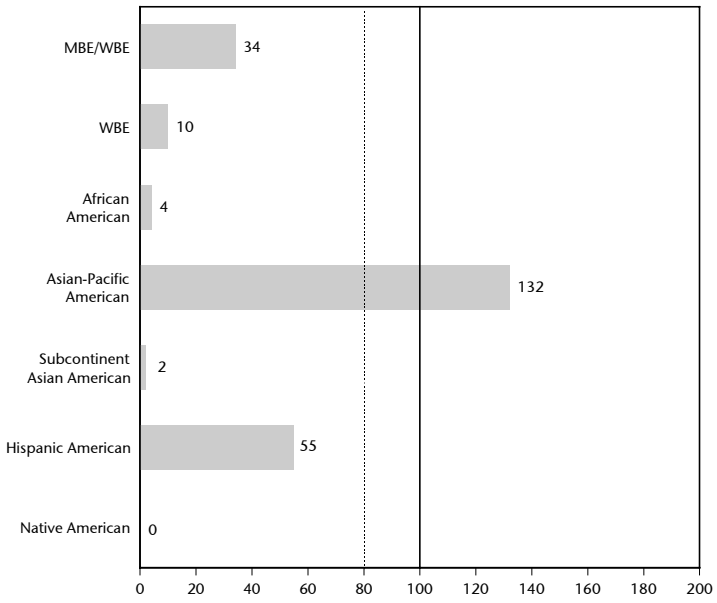
**Federally-funded contracts when DBE goals/good faith efforts program was in place.** Figure IV-6 summarizes the results of the disparity analysis in Figure IV-5 using disparity indices by race/ethnic/gender group from column (g). A line down the center of the graph shows an index of 100, which indicates "parity" between relative utilization and relative availability for a group. Indices under 100 may indicate a disparity between utilization and availability. The graph ends at a disparity index of 200 even though, in some cases, disparity indices exceed 200. For reference, a line is drawn at an index of 80. In the context of employment law, some courts use 80 as a benchmark for what may indicate a substantial disparity.

There was considerable underutilization of MBE/WBEs as a whole when MTS's DBE contract goals program was in place. There were large disparities for WBEs (disparity index of 10), African American-owned firms (index of 4), Subcontinent Asian American-owned firms (index of 2) and Native American-owned firms (disparity index of 0).

**Figure IV-6.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA-funded transportation contracts, 2003–April 2006**

Note:
Number of contracts/subcontracts analyzed is 96.
For more detail, see Figure E-2 in Appendix E.

Source:
BBC Research & Consulting.



**Federally-funded contracts from May 2006 through December 2007.** MBE/WBE utilization for FTA-funded contracts from May 2006 through December 2007 was 80 percent, which is very high and exceeded what would be expected given overall MBE/WBE availability for these contracts (70%).

Figure IV-7 compares disparity indices for specific MBE/WBE groups for FTA-funded contracts before (darker bars) and after May 1, 2006 (lighter bars). Overall, there was no disparity between MBE/WBE utilization and availability for FTA-funded contracts from May 2006 through December 2007. Utilization of Hispanic American- and Asian-Pacific American-owned firms greatly exceeded availability.

WBEs and Native American-owned firms received FTA-funded contracts between May 2006 and December 2007, but the size of these contracts was relatively small. Utilization of these firms fell below what would be expected based on their availability for MTS work. No contracts went to African American- or Subcontinent Asian American-owned firms.

**Figure IV-7.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA-funded transportation contracts, before and after May 2006**

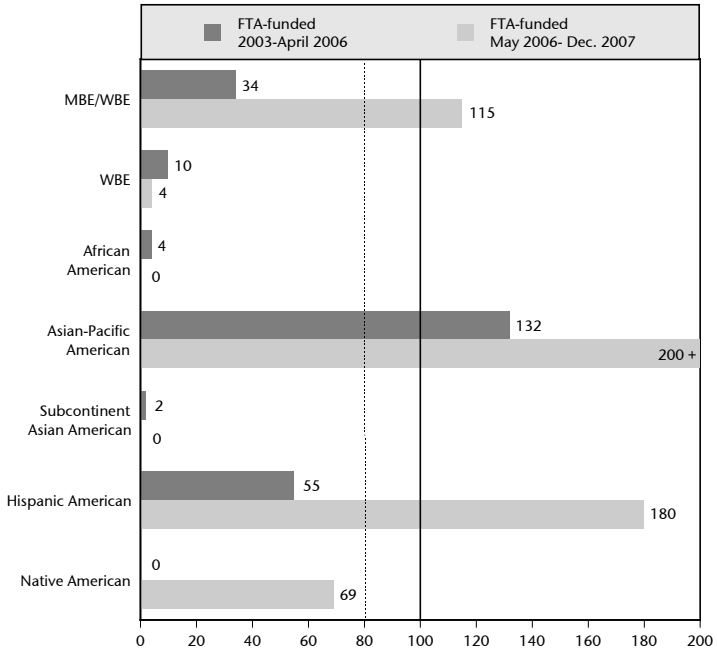
Note:

Number of contracts/subcontracts analyzed is 96 for FTA-funded 2003–April 30, 2006 and 40 for FTA-funded May 2006–Dec. 2007.

For more detail, see Figure E-2 and E-3 in Appendix E.

Source:

BBC Research & Consulting.



**Locally-funded contracts.** Based on the 38 locally-funded contracts in the procurement areas examined in the disparity study, overall MBE/WBE utilization fell short of what would be expected from BBC's availability analysis for these contracts. About 25 percent of locally-funded contract dollars went to MBE/WBEs compared with overall MBE/WBE availability for these contracts of 40 percent (disparity index of 59).

Figure IV-8 compares disparity indices for specific MBE/WBE groups for 2003-April 2006 FTA-funded contracts (darker bar) and 2003-2007 locally-funded contracts (lighter bar). There were disparities for locally-funded for the two groups that did not receive any of these 38 contracts: African American-owned firms and Subcontinent Asian American-owned firms. Also, utilization of WBEs was considerably below availability (disparity index of 4).

Utilization of Asian-Pacific American owned-firms and Native American-owned firms on MTS locally-funded contracts substantially exceeded availability. Utilization of Hispanic American-owned firms was in line with availability for locally-funded contracts.

**Figure IV-8.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA- and locally- funded transportation contracts**

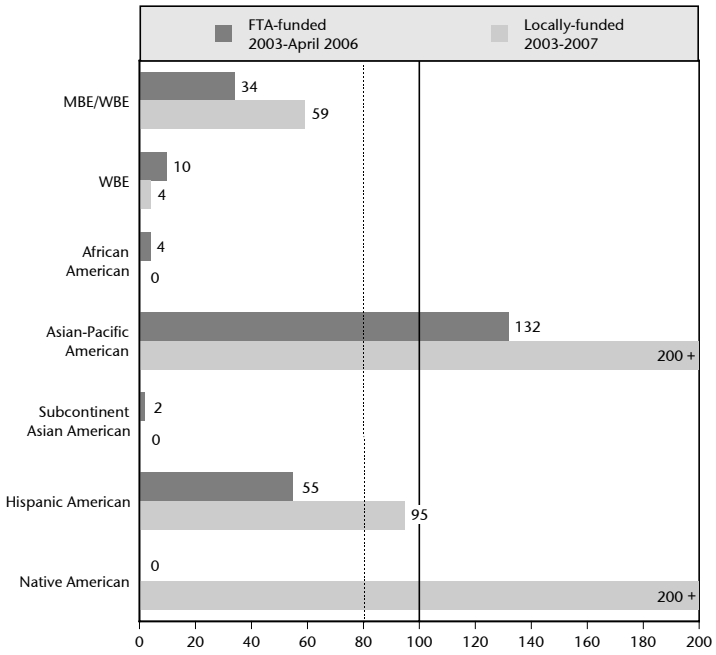
Note:

Number of contracts/subcontracts analyzed is 96 for FTA-funded and 38 for locally-funded contracts.

For more detail, see Figure E-2 and E-4 in Appendix E.

Source:

BBC Research & Consulting.

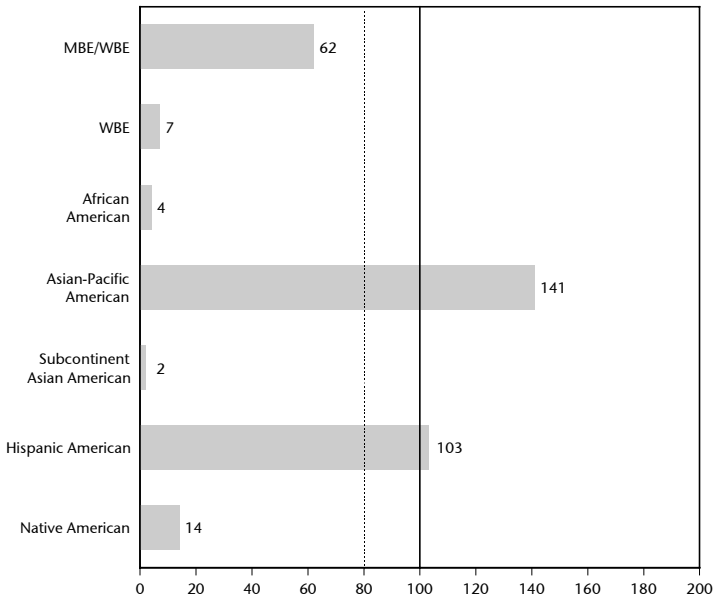


**Combined FTA- and locally-funded contracts.** Figure IV-9 shows combined results for FTA- and locally-funded contracts for 2003 through 2007. Overall, MBE/WBEs received 22 percent of MTS contract dollars, below what would be expected based on availability for this work (disparity index of 62). Large disparities are evident for WBEs and African American-, Subcontinent Asian American- and Native American-owned businesses.

**Figure IV-9.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA-and locally-funded transportation contracts, 2003–2007**

Note:
Number of contracts/subcontracts analyzed is 178.
For more detail, see Figure E-38 in Appendix E.

Source:
BBC Research & Consulting.




The disparity analyses presented here suggest the need for additional exploration of factors behind the relatively high overall utilization of MBE/WBEs on MTS FTA-funded contracts for May 2006 through December 2007 as well as the disparities for certain groups.

The next element of BBC's disparity analysis is to determine the likelihood that these disparities may have occurred by chance. Section V examines other factors that may explain MTS's relative success for some groups and the disparities identified for other MBE/WBE groups.

## Analysis of Statistical Significance of Any Disparities

Statistical significance of any disparities relates to the degree a researcher can reject "random chance" as a cause of the disparities. Often, chance in sampling of data is the factor that researchers consider in determining statistical significance of results. However, BBC attempted to contact every firm in Southern California in the set of firms identified by Dun & Bradstreet as doing business within relevant subindustries, as described in Appendix D. Further discussion of sampling as it relates to availability results is presented in Figure IV-10.

The utilization analysis also approaches a "population" of contracts. Therefore, any disparity found when comparing overall utilization with availability would be "statistically significant." BBC used a more sophisticated analytical tool to examine statistical significance of disparity results.

**Figure IV-10.**
**Confidence intervals for availability measures**

BBC conducted telephone interviews with more than 11,000 business establishments — a number of completed interviews that is so large as to often be treated as a "population," not a sample. BBC's analysis of the confidence interval around the estimate of MBE/WBE representation among all firms available for Consortium transportation work, 37.7 percent, is accurate within about +/- 1.5 percentage points at the 95 percent confidence level (BBC applied the finite population correction factor when determining confidence intervals). At this level of accuracy in the availability analysis, a disparity index of 96 could technically be "statistically significant." (By comparison, most survey results for proportions reported in the popular press are +/- 5 percentage points.)

**Monte Carlo simulation.** There are many opportunities in the sets of prime contracts and subcontracts BBC analyzed for minority- and women-owned firms to be awarded work. Some contract elements involve large dollars and others may be only a few thousand dollars. Monte Carlo analysis is a useful tool because there are many individual chances at winning work and each has a different payoff.

The technique works as follows:

- The statistical analysis starts by examining an individual contract element (a prime contract or subcontract).
- BBC's availability database provides information on individual firms "available" for that contract element based on type of work, prime versus subcontract role, size of the prime contract or subcontract, and location of the work. Each firm meeting those criteria was assumed to have an equal chance of receiving that contract element.
- The Monte Carlo simulation randomly chooses a firm for a contract element from the pool of available firms for that element. For example, the odds of a woman-owned firm receiving that contract element are equal to the number of women-owned firms available for that work divided by the total number of firms available for that contract element.
- A single Monte Carlo simulation run repeats the above process for all other elements in that set of contracts. The output of a single Monte Carlo run is simulated utilization of minority- and women-owned firms, by group, for that set of contract elements for that run.
- The Monte Carlo simulation is then repeated 1 million times for each set of contracts.
- BBC applied a 95 percent confidence level statistical standard, which is equivalent to a "two standard deviation test" sometimes applied by the courts when evaluating statistical significance. Applying a two-tailed test, the maximum number of simulations that could equal or fall below actual utilization is 25,000 out of 1 million, or 2.5 percent of total simulation runs, for a result to be statistically significant.

**Results.** Output of a Monte Carlo simulation is the number of runs out of 1 million that produce a result observed in the actual data. As shown in Figure IV-11, chance in contract awards cannot be rejected as the cause of disparities for MBE/WBEs, overall, for FTA-funded contracts from 2003 through April 2006 or for 2003 through 2007 locally-funded contracts even though the disparity indices for MBE/WBEs are also very low for these contracts. Because of the small number of prime contracts and subcontracts, and the diverse distribution of contract sizes, chance in contract awards might still be considered as an explanation for the observed disparities.

One can reject chance in contract awards as the cause of the disparity for WBEs for locally-funded contracts.

MTS may still review the disparity indices to draw inferences concerning its implementation of the Federal DBE Program. Other agencies receiving USDOT funds that award a small number of transportation contracts may face similar issues. MTS must use some caution, however, in interpreting disparity results, especially for smaller sets of contracts and subcontracts.

**Figure IV-11.**
**Statistical significance of disparities in MBE/WBE utilization**

| | FTA-funded | Locally-funded | |
|---|---|---|---|
| | 2003–April 2006 MBE/WBE | 2003-2007 MBE/WBE | 2003-2007 WBE only |
| Disparity index | 34 | 59 | 4 |
| Number of simulation runs out of 1 million that replicated observed disparity | 374,338 | 132,677 | 10,960 |
| Odds of observing disparity occurring due to "chance" | 37.43% | 13.27% | 1.10% |
| Reject chance in awards of contracts as a cause of disparity? | No | No | Yes |

Source: BBC Research & Consulting.

## Summary

Key information from the summary analysis of MBE/WBE utilization and availability includes:

- Overall MBE/WBE utilization on MTS FTA- and locally-funded contracts for 2003 through 2007 (about 22%) was below MBE/WBE availability for these contracts (36%).
- MTS utilization of WBEs, African American-owned firms, Subcontinent Asian American-owned businesses and Native American-owned firms fell below what would be expected based on the availability of these firms for MTS work.
- There were no disparities, overall, for Hispanic American- and Asian-Pacific American-owned firms.

This information, alone, may not be sufficient for MTS to make decisions as to future implementation of the Federal DBE Program. Using additional disparity analysis and other research, BBC explores in the following section of the report why any disparities may be occurring. BBC also examines MTS efforts that may be contributing to the high level of overall MBE/WBE utilization for some groups for some sets of contracts. Appendix E provides considerable additional information concerning utilization of MBE/WBEs and certified DBEs on MTS projects.

# SECTION V.
# Exploration of Possible Causes of Any Disparities

# SECTION V.
# Exploration of Possible Causes of Any Disparities

Three key questions emerge from the disparity analyses presented in Section IV:

1. Why is utilization higher on FTA-funded contracts after April 30, 2006 than before MTS discontinued the DBE contract goals/good faith efforts program?

2. Why is MBE/WBE utilization on MTS locally-funded contracts for the study period higher than FTA-funded contracts from 2003 through April 2006?

3. Why are disparities greater on FTA-funded contracts than locally-funded contracts?

Answers to these questions may be important as MTS considers how much of its overall annual aspirational goal for DBE participation can be met through race- and gender-neutral means, and what program elements may be needed. Results may also help MTS identify the specific race/gender/ethnic groups for which any race- or gender-conscious programs might apply.

## 1. Why did MBE/WBE utilization increase on FTA-funded contracts for May 2006 through December 2007?

As discussed in Section IV, MTS utilization of minority- and women-owned firms on FTA-funded contracts was substantially higher after MTS discontinued its DBE contract goals/good faith efforts (80%) than for 2003 through April 2006 (10%). Figure V-1 presents these data.

**Figure V-1.**
**MBE/WBE share of prime/ subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006**

Note:

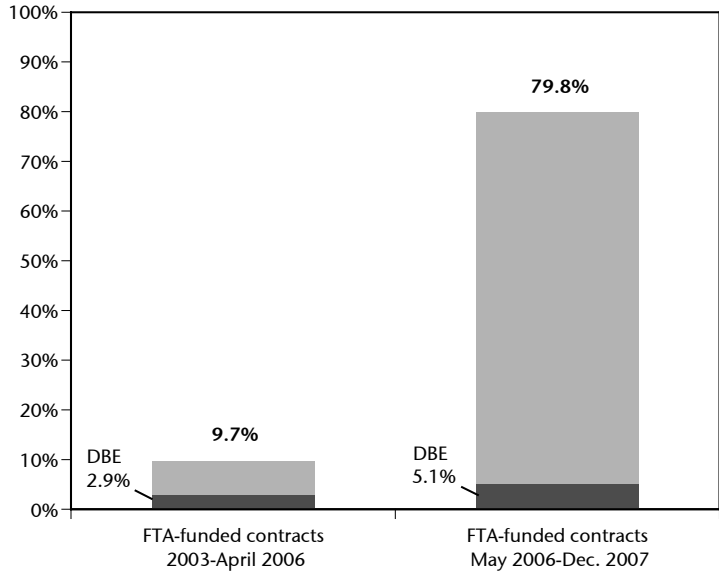
Certified DBE utilization.

Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded contracts and 40 for May 2006–Dec. 2007 FTA-funded contracts.

For more detail and results by group, see Figures E-2 and E-3 in Appendix E.

Source:

BBC Research & Consulting from data on MTS contracts.



Prior to May 1, 2006, MTS set DBE contract goals and required prime contractors to meet the goals or show good faith efforts to do so. Beginning May 1, 2006, MTS no longer required prime contractors to meet the goals or show good faith efforts. MTS still set DBE contract goals on FTA-funded contracts, which were voluntary, until discontinuing that practice in 2008.

BBC examined several possible questions concerning the higher MBE/WBE utilization on FTA-funded contracts beginning May 2006:

- Could the types and sizes of FTA-funded contracts explain the increase in MBE/WBE utilization?
- Could the continuation of voluntary DBE contract goals explain the relatively high MBE/WBE utilization on contracts?
- Has MTS increased its neutral efforts to encourage MBE/WBE bidding as prime contractors?
- Do a few large contracts explain the difference in MBE/WBE utilization for May 2006 through December 2007?

**Could the types and sizes of FTA-funded contracts explain the increase in MBE/WBE utilization?** Higher utilization of MBE/WBEs can be largely explained by the different types, contract roles and sizes of FTA-funded contracts for May 2006 through December 2007 compared with the earlier time period. There is no evidence that MBE/WBEs were more "overutilized" after the DBE contract goals program was changed. Actual MBE/WBE utilization was more in line with what would be expected based on the availability of MBE/WBEs for MTS work for May 2006 through December 2007.

- BBC identified a "benchmark" of about 28 percent for MBE/WBE utilization on 2003 through April 2006 FTA-funded contracts.
- After controlling for factors such as type, contract role and size of contracts and subcontracts, about 69 percent of FTA-funded contract dollars would be expected to go to MBE/WBEs for May 2006 through December 2007.

**Could the continuation of voluntary DBE contract goals explain the relatively high MBE/WBE utilization on contracts after May 2006?** There were striking differences in subcontracting activity before and after the MTS change in implementation of the DBE contract goals program.

**2003-April 2006.** MBE/WBEs accounted for 42 percent of dollars going to subcontractors on MTS FTA-funded contracts for 2003 through April 2006. About 7 percent of the dollars on FTA-funded contract dollars during this period were subcontracted.

**May 2006 through 2007.** MTS indicates that no FTA-funded contracts examined in the disparity study for May 2006 through December 2007 involved subcontracts. Thus, the voluntary DBE subcontracting goals program does not explain the relatively high MBE/WBE utilization during this period.

**Has MTS increased its neutral efforts to encourage MBE/WBE bidding as prime contractors?** BBC identified no major changes in MTS neutral efforts during the 2003 through 2007 study period.

**Do a few large contracts explain the difference in MBE/WBE utilization for May 2006 through December 2007?** There were a total of 136 FTA-funded prime contracts and subcontracts for about $71 million included in the analysis (2003-2007). BBC examined where one or more exceptionally large contracts could explain why overall MBE/WBE utilization might be relatively high or low for a particular time period.

**Pre-May 2006.** Two very large FTA-funded contracts had the effect of lowering the percentage of dollars going to MBE/WBEs for 2003 through April 2006 contracts. These contracts were awarded to majority-owned businesses and did not appear to include any subcontracts:

- A $25 million contract to Heritage Security Services; and
- A $20 million contract to Motorola Communications.

Together, these contracts represent more than 75 percent of the $59 million FTA-funded contract dollars included in the disparity analysis for 2003 through April 2006. For other FTA-funded contracts during this time period, MBE/WBE utilization was 40 percent.

**May 2006–December 2007.** In the period after the change in the DBE contract goals program, two large contracts awarded to MBEs increased overall MBE/WBE utilization on prime and subcontract FTA-funded work. These contracts were:

- A $4.5 million contract to Carlos Guzman (a Hispanic American-owned business); and
- A $560,000 contract to Calderon Building Maintenance (a Hispanic American-owned business).

Together, these two contracts represent more than 40 percent of the $12.3 million FTA-funded contract dollars for May 2006 through December 2007.

## 2. Why is utilization on locally-funded contracts higher than FTA-funded contracts from 2003 through April 2006?

MBE/WBE utilization for locally-funded contracts from 2003 through 2007 was 25 percent, much higher than the 10 percent found for FTA-funded contracts from 2003 through April 2006. BBC explored reasons why MBE/WBE utilization would be higher on locally-funded contracts than FTA-funded contracts, including:

- Could the types and sizes of locally-funded contracts explain the higher MBE/WBE utilization?
- Did participation as subcontractors affect MBE/WBE utilization on locally-funded contracts?

**Could the types and sizes of locally-funded contracts explain the higher MBE/WBE utilization on locally-funded contracts?** The types and sizes of locally-funded contracts would lead one to expect much more MBE/WBE utilization on locally-funded contracts compared with FTA-funded contracts for 2003 through April 2006.

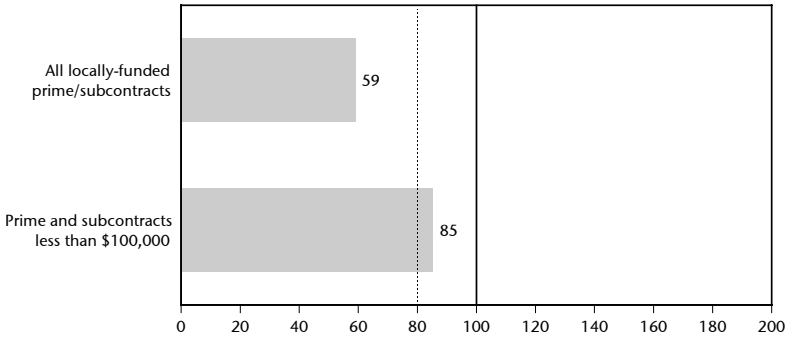
**Contract type and other factors.** As noted previously, the "benchmark" for MBE/WBE utilization BBC identified for 2003-April 2006 FTA-funded contracts was about 28 percent. Because locally-funded contracts had a different mix of types of work, contract sizes and subcontracting opportunities, about 41 percent of these contract dollars would be expected to go to MBE/WBEs.

**Mean contract size.** MBE/WBE utilization tends to be higher for smaller contracts. Mean contract size was smaller for locally-funded contracts compared with FTA-funded contracts, so size of contract can explain the differences in MBE/WBE utilization:

- FTA-funded contracts averaged $1 million for 2003 through April 2006; and
- Locally-funded contracts were about $37,000 on average.

**Disparity analysis for small contracts.** For a more in-depth look at how contract size affects MBE/WBE utilization, BBC conducted a disparity analysis for the 111 prime contracts less than or equal to $100,000 (FTA-funded and locally-funded). MBE/WBEs obtained about 32 percent of the dollars of small prime contracts. The availability analysis suggested that MBE/WBEs would receive 37 percent of this work. As shown in Figure V-2, MBE/WBEs were somewhat underutilized on small contracts relative to their availability. There were much larger disparities for MBE/WBEs when examining all locally-funded MTS prime contracts (disparity index of 59).

**Figure V-2.**
**Disparity indices for MBE/WBE utilization as prime contractors on FTA-and locally-funded transportation contracts, 2003–2007**




Note:

Number of prime contracts analyzed is 38 for locally-funded contracts and 111 for prime contracts less than $100,000.

For more detail and results by group, see Figures E-4 and E-40 in Appendix E.

Source:

BBC Research & Consulting.

**Did participation as subcontractors affect MBE/WBE utilization on locally-funded contracts?** MTS indicated that there were no subcontracts involved on locally-funded contracts. This could be because MTS did not operate any subcontracting goals program for locally-funded contracts.

## 3. Why are disparities greater on FTA-funded contracts than locally-funded contracts?

MBE/WBE disparities were greater for FTA-funded contracts for 2003 through April 2006 (overall disparity index of 34) than for locally-funded contracts (overall disparity index of 59).

BBC examined a number of reasons why there might be greater disparities in the utilization of MBE/WBEs on FTA-funded contracts when DBE goals were in place than on locally-funded contracts for which DBE goals did not exist, including:

- Are there disparities for certain types of FTA-funded contracts and not others?
- Is there anything in MTS bid process that would make it more difficult for MBE/WBEs to bid on FTA-funded contracts than on locally-funded contracts?
- Are MBE/WBEs that bid less likely to be competitive on MTS' FTA-funded contracts?

BBC also attempted to compare the relative number of bids of MBE/WBEs for these two sets of contracts, however, the number of bids examined was too small to be meaningful.

**Are there disparities for certain types of contracts and not others?** BBC conducted disparity analyses for FTA-funded construction, engineering and other goods and services contracts for 2003–April 2006. There is evidence of large disparities in MBE/WBE utilization for engineering and other goods and services-related work.

**Construction contracts.** About $2.2 million of the $59 million in FTA-funded contracts for 2003 through April 2006 was for construction-related work. MBE/WBE utilization was 27 percent compared to an expected level of 34 percent based on the availability analysis. MBE/WBEs received about 80 percent of the dollars on construction contracts that would be expected from their availability for this work (disparity index of 81 as shown in Figure V-3). BBC examined a total of 50 construction-related contracts in this analysis.

**Engineering contracts.** About $8.2 million in FTA-funded contracts during the DBE goals period was for engineering-related work. MBE/WBE utilization was 19 percent compared to an expected level of 26 percent based on the availability analysis. MBE/WBEs received less than three-fourths of the dollars on engineering contracts that would be expected from their availability (disparity index of 72 as shown in Figure V-3). BBC examined a total of 31 engineering-related contracts in this analysis.

**Other goods and services contracts.** Figure V-3 also shows results of a disparity analysis for FTA-funded other goods and services contracts for 2003-April 2006. The majority of contract dollars during that time period went to other goods and services. Over $48 million in FTA-funded contracts was examined. MBE/WBEs received 7 percent of contract dollars, substantially less than what would be expected from the availability analysis for these contracts (29%). The disparity index was 26.

**Figure V-3.**
**Disparity indices for FTA-funded construction, engineering, and other goods and services contracts, 2003–April 2006**

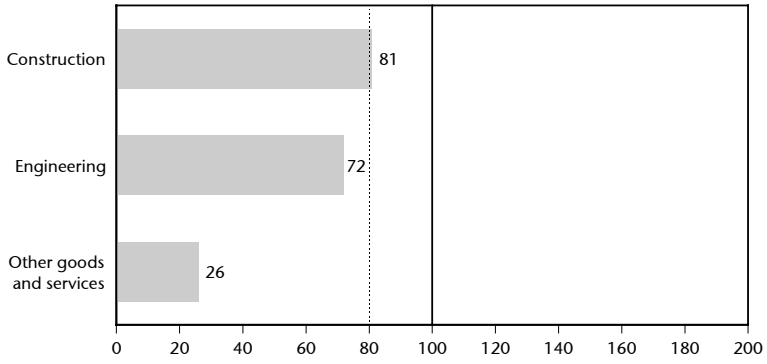
Note:

For more detail and results by group, see Figures E-11, E-20 and E-29 in Appendix E.

Number of contracts/subcontracts analyzed is 50 for construction, 31 for engineering and 15 for other goods and services.

Source:

BBC Research & Consulting from data on MTS contracts.



**Is there anything in MTS bid process that would make it more difficult for MBE/WBEs to bid on FTA-funded contracts than locally-funded contracts?** MTS generally uses the same bid and proposal processes for federally- and locally-funded contracts, as described below.

**MTS procurement procedures.** MTS uses formal purchases for contracts over $100,000 (or more than $50,000 for construction). These bid opportunities are publicly advertised. For smaller purchases, MTS can simply obtain quotes from three vendors. With certain exceptions, only purchases under $2,500 can be made without competition. Funding source usually does not affect the type of procurement chosen.

**Methods to learn of MTS procurements.** MTS advertises formal bids in local newspapers and on its website. It also mails bid notices to potential bidders (through informally developed bidders lists). For small procurements, MTS may obtain three bids via phone, fax or email.

Methods for disseminating information on bid opportunities are generally the same for FTA- and locally-funded contracts.

**Prequalification.** MTS had used prequalification in 2003, but rarely.

**Bonding.** MTS requires bonding for construction projects of more than $100,000. Bid bonds are required for certain goods and services bids. Bonding requirements typically do not vary between locally- and FTA-funded contracts.

**Typical insurance requirements.** Insurance requirements generally do not differ between FTA-funded and locally-funded contracts. Typical insurance requirements are:

- $1 million commercial general liability;
- $2 million general aggregate;
- $2 million completed operations and products aggregate;
- $1 million automobile liability; and
- $1 million workers' compensation/employer liability.

Additional coverage may include railroad protective or equivalent, professional liability, contractor equipment, and umbrella or excess liability.

General requirements for insurance coverage do not typically vary with funding source.

**Are MBE/WBE bidders less likely to be competitive on MTS FTA-funded contracts?** MBE/WBEs were awarded 15 of the 57 FTA-funded contracts examined in the disparity study for 2003 through April 2006, or 26 percent of these FTA-funded contracts (based on number of contract awards). For locally-funded contracts, MBE/WBEs were awarded 10 of 38 contracts examined in the study period (also 26%).

FTA-funded contracts included in the disparity study were an average of $691,200 which is higher than $37,400, the mean locally-funded contract size. MBE/WBEs might be less likely to bid on FTA-funded contracts due to their larger size. This might explain the higher MBE/WBE utilization on locally-funded contracts included in the disparity study.

## Summary

BBC explored the three questions listed below.

**Why is utilization higher on FTA-funded contracts after April 30, 2006 than before MTS discontinued the DBE contract goals/good faith efforts program?** Results include the following:

- Higher utilization of MBE/WBEs can be largely explained by the different types, contract roles and sizes of FTA-funded contracts for May 2006 through December 2007 compared with the earlier time period.

- There is no evidence that MBE/WBEs were more "overutilized" after the DBE contract goals program was changed.

- No subcontracts were identified for FTA-funded contracts after MTS changed its implementation of the DBE contract goals/good faith effort program.

- Two large FTA-funded contracts going to majority-owned firms prior to May 2006 and two large contracts awarded to Hispanic American-owned firms after May 2006 accounts for much of the difference.

**Why is MBE/WBE utilization on MTS locally-funded contracts for the study period higher than FTA-funded contracts from 2003 through April 2006?** Key results include:

- Locally-funded contracts involve different types and sizes of contracts than FTA-funded contracts. Especially for smaller contracts, MBE/WBE utilization is higher.

- One important factor, however, is that no subcontracts were identified for MTS locally-funded contracts for 2003 through 2007.

**Why are disparities greater on FTA-funded contracts than locally-funded contracts?** Other than results mentioned above, BBC did not identify additional factors explaining the greater disparities for FTA-funded contracts for 2003 through April 2006.

# SECTION VI.
# Summary of Results

# SECTION VI.
# Summary

MTS must implement the Federal DBE Program to receive USDOT funds. Recent legal decisions and guidance from USDOT have led MTS to reexamine how it implements the Program. This summary discusses information to assist MTS in making decisions concerning compliance with the Federal DBE Program:

1. Setting an overall annual aspirational goal for DBE participation in FTA-funded contracts;

2. Determining achievement of the annual aspirational goal through neutral means;

3. Identifying specific measures to be used in implementing the Federal DBE Program; and

4. Considering initiatives applicable to its locally-funded contracts (contracts for which the Federal DBE Program does not apply).

## 1. Overall Annual Aspirational Goal

As presented in Section III, BBC's availability analysis indicates that minority- and women-owned firms currently or potentially certified as DBEs would receive 22.8 percent of prime contract and subcontract dollars for MTS FTA-funded transportation contracts based on their relative availability for this work.

- MTS should consider 22.8 percent as the base figure for its overall annual aspirational goal for DBE participation if the types of FTA-funded contracts for the time period covered by the goal will be similar to FTA-funded contracts from 2003 through 2007.

- The 22.8 percent base figure exceeds MTS's 1.6 percent overall annual aspirational DBE goal for FFY 2009. MTS only included certified DBEs in its calculations; BBC counted in the base figure minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified.[1]

Note that the annual aspirational goal could change based on changes in the actual contract opportunities that are available in any given year. MTS can also make upward or downward adjustments to the recommended base figure as it determines its final overall annual aspirational goal for DBE participation, as discussed on the following page.

[1] Consistent with USDOT guidance, as discussed in Section III.

The Federal DBE Program (49 CFR Section 26.45) outlines factors that recipients of USDOT funds must consider when assessing whether or not to make a "step 2" adjustment to the base figure:

a. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;

b. Data on employment, self-employment, education, training and union apprenticeship programs;

c. Information on the ability of DBEs to get financing, bonding and insurance; and

d. Other relevant data.

BBC completed an analysis of each of the above factors. BBC was able to quantify certain factors and their impact on the base figure. Other information does not directly lead to a specific numerical adjustment to the base figure, but is still significant in assessing whether or not to make a step 2 adjustment.

**a. Volume of work DBEs have performed in recent years.** BBC analyzed utilization of certified DBEs for MTS FTA-funded contracts. Figure VI-1, on the following page, describes how BBC estimated overall DBE utilization combining different groups of FTA-funded contracts from 2003 through 2007. Most of the dollars of FTA-funded contracts applicable in this analysis were directly studied in the disparity analysis. BBC developed estimates of DBE utilization for two smaller sets of FTA-funded contracts, as described below:

- As presented in Figure VI-1, DBEs obtained 3.3 percent of the $71 million of FTA-funded contract dollars BBC examined in the disparity analysis.
- There was $11.5 million in a variety of construction, engineering, and goods and services contracts not included in BBC's disparity analysis that were similar to contracts in the disparity analysis.[2] For purposes of calculating overall DBE utilization, BBC used DBE participation determined for the $71 million of disparity analysis contracts (3.3%) as a representative figure for DBE utilization on the $11.5 million of similar contracts not included in the disparity analysis.
- Some MTS contracts were very different from the FTA-funded contracts examined in the disparity analysis (e.g., types of procurements primarily made from national markets). BBC assumed no DBE participation for the $29.4 million of these contracts.

[2] In many instances, the total dollars of these highly varied types of contracts were too small to warrant inclusion in the disparity analysis.

Based on the analysis discussed above, DBE utilization was about 2.4 percent for the $112 million of MTS 2003–2007 FTA-funded contracts shown in Figure VI-2. MTS could consider this information in assessing whether or how to make any step 2 adjustments to the base figure.[3]

**Figure VI-1.**
**Estimated DBE participation on FTA-funded contracts, 2003-2007**

| | (a) DBE utilization on FTA-funded contracts 2003-2007 (millions) | (a) FTA-funded contract dollars 2003-2007 (millions) | (b) DBE utilization (%) |
|---|---|---|---|
| **Contracts considered in the annual goal** | | | |
| Examined in the study | $2.3 | $71.0 | 3.3% |
| Other similar to above contracts* | 0.4 | 11.5 | 3.3% |
| Other not similar to above contracts** | 0.0 | 29.4 | 0.0% |
| Total examined | $2.7 | $111.9 | 2.4% |
| **Contracts not considered in the annual goal** | | | |
| Governments, associations and not-for-profit agencies | | $10.2 | |
| TVM or TVM-related | | 54.0 | |
| Transit operations contracts | | 275.3 | |
| Total FTA-funded contracts | | $451.4 | |

Note: * DBE utilization not directly studied. Level of DBE participation assumed to equal contracts examined in the study.

** Includes (a) purchases primarily made from outside Southern California and (b) highly-specialized local purchases such as financial services, utilities, medical services, educational services, and property purchases or leases. 0% DBE utilization is assumed for these contracts.

Source: BBC Research & Consulting.

**b. Employment, self-employment, education and training.** BBC's analysis suggests that there are certain barriers affecting entry of minorities and women into the Southern California construction and engineering industries. These barriers begin with education and continue through occupational advancement and business ownership.

**Quantitative information on education, employment and advancement.** Appendix F contains a detailed analysis of education, employment and advancement in the Southern California construction and engineering industries. Results include:

- African Americans comprised 3 percent and Hispanic Americans were 10 percent of civil, environmental and geological engineers in Southern California in 2007. Disparities in educational attainment appear to affect entry into these fields.

- Relative to the representation of women among college graduates in Southern California, few civil, environmental and geological engineers are women (15% in 2007).

[3] MTS' DBE participation reports to FTA also indicate a relatively high level of DBE participation. Note that MTS's DBE participation reports submitted to FTA make different assumptions when calculating DBE participation. For example, MTS credits the full contract amount toward DBE participation for contracts where the prime contractor is a DBE. BBC only counts the work on the contract performed by the DBE prime or any DBE subs; work going to majority-owned subcontractors is counted as such. The contracts included in MTS' DBE participation may also differ from the contracts included in BBC's analysis.

- Representation of African Americans and Asian-Pacific Americans in the construction industry is relatively low, even among entry-level jobs. The percentage of California construction workers who are African American declined from 2000 to 2007 in both San Diego and Southern California.

  - In San Diego County, African Americans were 5 percent of all workers in 2007 but only 2 percent of construction workers.

  - Asian-Pacific Americans were 3 percent of the construction workforce and 11 percent of all workers in San Diego in 2007 (similar to all of Southern California). The fact that Asian-Pacific Americans are more likely to go to college than other groups may explain part of this difference.

  - Relative under-representation of Subcontinent Asian Americans is evident in 2000 and 2007 in both San Diego and all of Southern California.

  - Hispanic Americans were 40 percent of San Diego area construction employees in 2007. High representation of Latinos in the local construction industry does not fully explain disparities in construction employment for African Americans and Asian-Pacific Americans.

- Representation of women in construction as a whole is relatively low (13% in the San Diego area in 2007). In many Southern California construction trades, only one or two of every 100 workers are women.

- There are disparities in the advancement of Hispanic Americans to certain construction occupations.

- Relatively few African Americans, Hispanic Americans and women working in the Southern California construction industry are managers.

These local patterns of disparities are generally consistent with the United States as a whole.

**Quantitative information on self-employment.** Through regression models, BBC investigated whether race/ethnicity and gender influenced rates of business ownership among employees in Southern California after accounting for the effects of neutral factors.[4]

- Statistically significant disparities in construction business ownership rates were found for African Americans, Subcontinent Asian Americans, Hispanic Americans and women in 2000.

- Statistically significant disparities were found for Asian-Pacific Americans and women in the engineering industry in 2000.

[4] BBC examined U.S. Census data on business ownership rates using methods similar to analyses examined in the court cases involving state departments of transportation in Illinois and Minnesota. At the time of this report, the most extensive data on business ownership come from the 2000 Census. The analyses of these data provide the highest level of accuracy and detail and are the focus of this summary.

Appendix G provides detailed results of these regression models.

Figure VI-2 quantifies the impact on the base figure if the above groups owned businesses at the same rates as similarly situated non-minorities ("but for" calculations). Figure VI-2 includes the same categories of contracts used when calculating the base figure in Section III.

- Separate "but for" calculations were made for construction and engineering, and then weighted based on MTS dollars of FTA-funded contracts for these types of procurement. Within construction, potential adjustments to availability were calculated for African Americans, Subcontinent Asian Americans and Hispanic Americans as well as white women. For engineering, BBC calculated potential adjustments for Asian-Pacific Americans and white women.

- Figure VI-2 does not make any adjustment to availability for goods and other services firms (regression models for business ownership were not developed for goods and other services).

- Because BBC also estimated DBE availability for the $11.5 million of other FTA-funded contracts similar to the construction, engineering and other goods and services contracts directly studied for MTS, availability for this small group of contracts was adjusted as well.

- At the bottom of Figure VI-2, availability for the $29.4 million in contracts not similar to the contracts included in the disparity analysis received no adjustment to availability (DBE availability for these contracts was assumed to be 0% as discussed in Section III).

The columns of Figure VI-2 represent the following:

a. **Current availability.** Section III of the report presents current availability for MTS FTA-funded contracts.

b. **Disparity indices for business ownership.** Appendix G explains the regression models BBC used to examine potential disparities in business ownership rates based on race, ethnicity or gender. Column b presents disparity indices for race/ethnic/gender groups showing statistically significant disparities.

c. **Availability after initial adjustment.** Dividing current availability (column a) by the disparity index from the business ownership regression models (column b) and then multiplying by 100 produces initial availability estimates after adjusting for the disparities in business ownership.

d. **Availability after scaling to 100%.** The results in column c were rescaled to equal 100 percent. Rescaled estimates are shown in column d of Figure VI-2.

e. **Components of goal.** The final column of values is equal to the adjusted availability for minorities and women weighted by the share of FTA-funded contract dollars each procurement area represented. For example, 2.3 percent of MTS FTA-funded contract dollars were construction contracts. The 0.86 percent components of goal figure for construction is equal to 37.5 percent adjusted DBE availability for construction (column d) multiplied by 2.3 percent. These values in column e are summed to equal total adjusted DBE availability — 23.5 percent.

**Figure VI-2.**
**Potential adjustment to base figure for overall annual aspirational DBE goal**

| Business ownership | a. Current availability | b. Disparity index for business ownership | c. Availability after initial adjustment* | d. Availability after scaling to 100% | e. Components of goal** |
|---|---|---|---|---|---|
| **Construction** | | | | | |
| African Americans | 2.7 % | 71 | 3.8 % | 3.3 % | |
| Subcontinent Asian Americans | 0.4 | 50 | 0.8 | 0.7 | |
| Hispanic Americans | 11.7 | 64 | 18.3 | 15.9 | |
| White women | 9.1 | 57 | 16.0 | 13.9 | |
| Asian-Pacific Americans and Native Americans | 4.2 | no adjustment | 4.2 | 3.7 | |
| **Total minority and female** | 28.1 % | | 43.1 % | 37.5 % | 0.86% |
| Majority | 71.9 | | 71.9 | 62.5 | |
| **Total firms** | 100.0 % | | 115.0 % | 100.0 % | |
| **Engineering** | | | | | |
| Asian-Pacific Americans | 3.4 % | 66 | 5.2 % | 4.8 % | |
| White women | 8.1 | 58 | 14.0 | 13.0 | |
| Other minority groups | 9.8 | no adjustment | 9.8 | 9.1 | |
| **Total minority and female** | 21.3 % | | 28.9 % | 26.9 % | 1.99% |
| Majority | 78.7 | | 78.7 | 73.1 | |
| **Total firms** | 100.0 % | | 107.6 % | 100.0 % | |
| **Goods and services** | | | | | |
| Total minority and female | 32.4 % | no adjustment | 32.4 % | 32.4 % | 17.40% |
| Majority | 67.6 | | 67.6 | 67.6 | |
| **Total firms** | 100.0 % | | 100.0 % | 100.0 % | |
| **Other similar to above contracts** | | | | | |
| Total minority and female | 30.9 % | proportional | 31.9 % | 31.6 % | 3.25% |
| Majority | 69.1 | adjustment | 69.1 | 68.4 | |
| **Total firms** | 100.0 % | | 101.0 % | 100.0 % | |
| **Other not similar to above contracts** | | | | | |
| Total minority and female | 0.0 % | no adjustment | 0.0 % | 0.0 % | 0.00% |
| Majority | 100.0 | | 100.0 | 100.0 | |
| **Total firms** | 100.0 % | | 100.0 % | 100.0 % | |
| **Total minority and female after adjustments and weighting** | | | | | 23.50% |

Note: * Initial adjustment is calculated as current availability divided by the disparity index, which is then multiplied by 100.

** Components of goal equals availability after scaling to 100% multiplied by percentage of total FTA-funded contract dollars in that category (construction is 2.3%, engineering is 7.4%, goods and services is 53.7 %, other similar to above contracts is 10.3% and other not similar to above contracts is 26.3%).

Source: BBC Research & Consulting.

**Qualitative information.** The study team also collected and analyzed qualitative information concerning conditions in the local transportation contracting industry. The following provides examples from the in-depth analysis contained in Appendix B.

A number of interviewees reported a discriminatory work environment for minorities and women in Southern California:

- Some interviewees reported that they were made to feel unwelcome in the local industry. For example, one interviewee, representing a white woman-owned firm reported that she started her own construction firm because the firm that she worked for previously made clear to her its stance that "a woman should [not] be in management."

- Other interviewees reported instances of racial slurs, sexist comments and sexual harassment, race-related graffiti on work sites, and other incidents affecting women and minorities. For example, an interviewee representing a white male-owned firm stated that he is aware of rampant, race-related graffiti being present on some of his work sites. He referred to the construction industry as a "jungle environment." There were also examples indicating that some non-minorities and men did not want to work with minorities or women or would not respect a minority or woman in a supervisory position.

- Some interviewees reported that their race or gender has prevented them from being a part of industry-related groups such as unions and trade associations. For example, an interviewee representing an African American male-owned firm indicated that his race prevented him from joining a local construction union: "Until 2002, black contractors could not get into the San Diego union. He continued, "I tried to get into the union. I paid about $12 per month to stay on the list for about two years before I went into business. I was never accepted."

- Other minority and female interviewees as well as some white men indicated that there was probably discrimination but could not identify specific examples.

Some business owners reported that they did not have specific, recent instances of discriminatory behavior in the local industry:

- Some interviewees expressed experiences of discriminatory behavior that occurred in the past which they no longer saw today. For example, an interviewee representing a Hispanic American male-owned firm said that when his father started the firm 30 years ago he experienced discrimination. He went on to say that there are such a large number of Hispanic Americans in the industry today that discriminating against them would be akin to discriminating against the entire industry — it would be too impractical.

- Other interviewees reported that society has overcome discrimination based on race and gender, leading to increased opportunity for MBE/WBE firms. For example, an interviewee representing a local trade association indicated that racism and sexism are not as problematic as they were in the past. With regard to racism, she said, "We've come a long way." With regard to sexism, she commented, "Twenty years ago … there was a different pay scale [for men and women], but I believe those days are gone."

**c. Access to financing, bonding and insurance.** BBC collected and analyzed both quantitative and qualitative information concerning access to capital. Information about bonding and insurance was also examined.

**Quantitative information.** BBC's analysis of available data indicates that minority-owned firms are more likely to experience problems accessing capital than non-Hispanic white-owned firms. Appendix H provides these results.

Some of this evidence relates to homeownership and home mortgages:

- Relatively fewer African Americans, Hispanic Americans and Native Americans in the Greater Los Angeles Area and Southern California own homes than non-Hispanic whites, and those who do own homes tend to have lower home values. Home equity has been an important source of capital for business start-up and growth.
- African Americans, Asian Americans, Hispanic Americans and Native Americans applying for home mortgages are more likely than non-minorities to have their applications denied.
- African American, Hispanic American and Native American mortgage borrowers are more likely to have subprime loans.

Other evidence pertains to business loans:

- Although business loan denial rates may have narrowed between minority- and non-minority-owned firms in the Pacific region, one recent study found that African American-, Asian American- and Hispanic American-owned businesses have higher denial rates when applying for business loans after controlling for other factors. When they receive loans, African American- and Hispanic American-owned firms appear to pay higher interest rates, after controlling for other factors.
- Relatively more African American- and Hispanic American-owned firms that need credit do not apply for loans because they fear being denied the loan.

**Qualitative information**. During in-depth interviews with a variety of business owners and trade association leaders, many representatives of small business owners indicated that financing, bonding and insurance are barriers to doing business in both the private and public sectors:

- Most interviewees indicated that financing is a barrier for all small businesses, regardless of race or gender. For example, one interviewee, representing an Asian American male-owned firm, explained that credit is extremely tight in the current market and particularly so for small firms that are not well established. Regarding credit for small firms, he asked rhetorically, "If I am a bank, would I loan money to [someone] with no experience?"
- Other interviewees reported that issues related to financing, bonding and insurance disproportionately affect minority- and woman-owned firms. For example, an interviewee representing a female-owned construction business stated, "I think minorities and women have a much harder time getting capital, getting bonding and getting insurance … women are still asked to have their husbands sign at the bank, which floors me after 33 years [in business]."

- Some interviewees indicated that financing and bonding was a particular problem for minorities and women in the past but that access had improved, sometimes through government programs. For example, an interviewee representing an African American male-owned firm stated that his race affected his firm's ability to get financing and bonding "a long time ago," but that now it has "opened up" so that he does not have any problems. He feels that the change occurred gradually over time.

- Some interviewees reported that bonding and insurance requirements in the public sector dissuade firms from pursuing public sector work — at least as prime contractors. For example, an interviewee representing a white male-owned firm stated that all public sector work requires bonds — contractors cannot work on Consortium agency projects without obtaining a significant bond. He went on to say that if prime contractors do not carry MBE/WBE subcontractors under their bonds, it becomes a major issue for those subcontractors.

A few interviewees reported that there are no barriers in the local industry associated with financing, bonding or insurance:

- Some interviewees said that obtaining a loan is an easy process if firms have their financials in order, regardless of race, gender or firm size. For example, an interviewee representing a white male-owned firm indicated that obtaining a loan is relatively easy, regardless of race, ethnicity, or gender.

- A few minority and woman interviewees reported that their MBE/WBE status helped them obtain loans or qualify for bonds. For example, one interviewee, representing a Hispanic male-owned firm, stated that his firm "wouldn't have been able to get credit at all without the DBE program." He also noted that sometimes a prime contractor will waive a bonding requirement for his firm because it is a small DBE firm.

**d. Other data concerning relative success of minority- and women-owned firms in Southern California.** The Federal DBE Program (49 CFR Section 26.45) suggests that federal aid recipients examine "other factors" as well when determining whether or not to make a step 2 adjustment to the base figure. One logical factor is the relative success of minority- and women-owned firms in the local transportation contracting industry. Examples of quantitative and qualitative information examined in the disparity study are provided below.

**Quantitative information.** Analyses of different U.S. Census data include the following results:

- Data from the 2002 Survey of Business Owners (SBO) indicate that annual receipts were lower for African American-, Asian American-, Hispanic American-, Native American- and women-owned firms compared with all firms in Southern California (for all industries combined). There were disparities for African American-, Asian American-, Hispanic American and Native American-owned construction firms compared with majority-owned firms in California (SBO construction industry-specific data are not published for Southern California). There were no disparities for female-owned construction firms for the state.

- Regression analyses using 2000 U.S. Bureau of the Census data for Southern California show statistically significant disparities in business earnings for Hispanic American and female business owners in the construction industry.[5] The regression analysis suggests the possibility of disparities for African American, Asian-Pacific American and Native American business owners, but these results were not statistically significant (perhaps due to small sample sizes in some cases).

- Regression analyses for Southern California engineering business owners indicate evidence of disparities for female business owners. Earnings of Native American business owners exceeded non-Hispanic whites after controlling for other factors.

Revenue data collected as part of BBC's availability interviews with transportation contracting firms in Southern California indicated the following disparities:

- **Construction.** Lower annual revenue for African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned construction firms.

- **Engineering and related businesses.** Lower annual revenue for African American, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned engineering and related firms.

- **Goods and services.** Lower annual revenue for minority- and women-owned goods and services firms compared with majority-owned firms.

Data from the availability interviews also indicate the following concerning bidding by MBE/WBEs and majority-owned firms.

- **Bidding on public sector work.** Relatively fewer African American-, Hispanic American- and Native American-owned construction firms had bid on any part of a government contract within the previous five years based on telephone interview data. Minority- and women-owned engineering firms were also less likely to have bid on any part of a public sector contract.[6]

- **Success in pursuing public sector work.** Among construction firms that had attempted to obtain public sector work, firms owned by African Americans, Subcontinent Asian Americans, Hispanic Americans and women were less likely to have been successful in receiving a contract or subcontract than majority-owned firms. Similar disparities were found for African American- and Hispanic-owned engineering firms.

[5] Appendix I provides further detail about data sources and BBC's analyses.

[6] BBC's availability analysis presented in Section III accounts for differences in bidding on public sector work between MBE/WBEs and majority-owned firms.

- **Bid capacity.** The availability interviews collected data on the largest contract or subcontract a firm had performed or bid on within the previous five years. This statistic is referred to as "bid capacity" in this report.[7]

  - MBE/WBEs were less likely than majority-owned firms to have received or bid on large contracts or subcontracts.

  - When BBC conducted regression analyses to further explore these differences, firm specialization and age were important in explaining whether a firm had high bid capacity. BBC did not identify statistically significant differences in bid capacity based on minority or female ownership in the construction industry after controlling for specialization and company age.

  - Women-owned engineering firms appeared to have higher bid capacity after controlling for other factors. There were no statistically significant disparities for minority-owned engineering firms.

**Qualitative information.** Many individuals believe that there are disadvantages for minority- and women-owned firms in the local marketplace that affect the success of those firms:

- Some interviewees indicated that they have experienced racial or gender stereotyping "first-hand." Others reported hearing of such experiences for minorities and women in the local industry. For example, an interviewee representing a local trade organization said that some of the personnel at public agencies believe that MBE/WBE firms are less qualified than large, well-established firms and that their participation generates additional costs. He said that many of those people believe there are "no good MBEs out there." He remarked, "These individuals should be open to accepting that there are, in fact, good [MBE/WBE] firms and that their utilization does not increase costs."

  When asked if his firm has been discriminated against based on the owner's ethnicity, one interviewee, representing an African American male-owned firm, said: "To be honest with you, of course I have been discriminated against. [Prime contractors] will give you the contract, but in order to keep it I have to put the white person out there to be the front man." He continued, "Once they find out it is a black man behind the operation they will unfairly terminate the contract."

- Many interviewees indicated that it is more difficult for minority- and women-owned firms to "break into" the local industry because of issues related to race/ethnicity or gender. For example, an interviewee representing a female-owned firm reported that it is difficult for her firm to develop relationships with prime contractors, precisely because her firm is female-owned. She said that there have been instances when she has had to bring a male employee from her company to meetings with prime contractors so that they would treat her with more respect. She indicated that there is a general aversion to women in the construction industry.

[7] Differences in bid capacity are also reflected in BBC's availability analyses as described in Section III.

Minority and female business owners report a variety of experiences when attempting to obtain work as subcontractors on projects:

- Some MBE/WBE interviewees reported that prime contractors using for public sector work do not use them on private sector work.

- Some interviewees suggested that it might be difficult for a minority- or woman-owned subcontractor to "break in" with a prime contractor, but once they do so and show good work, the prime contractor will use them again. For example, one interviewee, representing a public works trade organization, said that pre-existing relationships between prime contractors and subcontractors is the most important factor in subcontractors getting work: "Some primes might have sub opportunities and [our organization] will then post the opportunity or work to get the appropriate team together. But putting together a team is mostly about relationships and trust."

- Other minority- and women-owned firms indicated that they work with the same prime contractors on both private and public sector contracts.

A number of interviewees, including some minority and female business owners, said that there are few barriers, if any, related to race/ethnicity or gender today:

- For example, an interviewee representing a local trade association stated, "I think when the baby boom generation came in [racial discrimination] pretty well dissipated. That's me and I think the next generation won't even know what we're talking about. We're electing a black man President. You can't tell me there's a lot of prejudice deep seeded in the country when we're electing Barack Obama now."

- A number of interviewees reported barriers to success that affect small firms but none that are particular to minority- and women-owned firms. For example, an interviewee representing an African American male-owned firm commented that "the discrimination that continues today has nothing to do with race … we got rid of the racist system, and now we've got a system of cronyism. And all of us are not cronies."

**Summary of information for step 2 analysis.** BBC's in-depth analysis of each factor outlined in the Federal DBE Program suggests that MTS consider one of the following options concerning a step 2 adjustment.

**Option 1 – Making an upward adjustment at this time.** Over the long-term, there are reasons that MTS might consider a higher overall aspirational goal than the 22.8 percent base figure.

- If MTS were to make an adjustment, it could consider the 23.5 percent figure for DBE participation after adjusting for business ownership rates (shown in Figure VI-2).

- Analyses of access to capital and other factors also support an overall annual aspirational goal higher than 22.8 percent.

**Option 2 – Making no step 2 adjustment.** MTS might adopt the 22.8 percent base figure for its overall annual aspirational goal for DBE participation without any step 2 adjustment. The Federal DBE Program does not require agencies to make a step 2 adjustment in the goal-setting process as long as the agency can explain this decision.

**Option 3 – Making a downward adjustment at this time.** There are also reasons for a downward step 2 adjustment:

- BBC's estimate of overall DBE participation on FTA-funded contracts for 2003 through 2007 was about 2.4 percent. It appears that many of the minority- and women-owned firms receiving MTS prime contracts and subcontracts were not DBE certified. (Therefore, this statistic may not fully reflect a measure of "current capacity of DBEs to perform work"[8] as it does not include firms that could potentially be certified as DBEs.

MTS might conclude that the 22.8 percent base figure for DBE participation is so much higher than DBE participation of 2.4 percent that it should adjust the goal based on an average of 22.8 percent and 2.4 percent, which is 12.6 percent. This approach is consistent with the averaging of a base figure and past DBE participation in past MTS goals submissions approved by FTA.

## 2. Percentage of the Annual Goal to be Achieved through Neutral Means

In 49 CFR Section 26.51, USDOT requires agencies to meet the maximum feasible portion of the overall annual aspirational DBE goal using race-neutral means. USDOT Questions and Answers about 49 CRF Part 26 addresses how federal aid recipients project what portion of their overall annual goal they will meet through race- and gender-neutral means.[9] Examples of questions recipients could ask in making this analysis include:

a. What is the participation of DBEs in the recipient's contracts that do not have contract goals?

b. There may be information about state, local, or private contracting in analogous areas where contract goals are not used (e.g., in situations where a prior state/local affirmative action program was ended). What is the extent of participation of minority or women's businesses in programs without goals?

c. What is the extent of race-neutral efforts that the recipient will have in place for the next fiscal year?

d. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?

e. To what extent have DBE primes participated in the recipient's programs in the past?

f. To what extent has the recipient oversubscribed its DBE goals in the past?

[8] Per 49 CFR Section 26.45 (d)(1)(i).

[9] See http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc

These types of analyses are generally consistent with relevant court decisions discussed in Appendix A, including the Ninth Circuit Court of Appeals decision in *Western States Paving*, and with the guidance from USDOT subsequent to the *Western States Paving* decision.[10]

**a. Participation on MTS contracts without goals/good faith efforts program.** MTS changed its implementation of the Federal DBE Program as of May 1, 2006. From May 2006 through December 2007, MTS set advisory goals for DBE participation on FTA-funded contracts, but did not require bidders to meet those goals or show good faith efforts.

**Overall utilization of minority- and women-owned firms.** There were 40 FTA-funded contracts from May 2006 through December 2007 within the procurement areas BBC examined in the MTS disparity study.[11] No subcontracts were identified for these procurements.

MBE/WBEs obtained 10 of the 40 FTA-funded contracts for May 2006 through December 2007, accounting for 80 percent of federal contract dollars during that time period. As shown in Figure VI-3, nearly all of the FTA-funded contract dollars that MBE/WBEs received after April 2006 went to firms that that were not certified as DBEs.

BBC studied MBE/WBE utilization for 38 locally-funded transportation contracts totaling $1.4 million for 2003 through 2007.[12] No subcontracting goals program applied to these contracts, and based on MTS information, there were no subcontracts for these procurements. MBE/WBE utilization on locally-funded contracts was about 25 percent. Utilization of certified DBEs was 20 percent for locally-funded contracts.

**Figure VI-3.**
**MBE/WBE share of prime/ subcontract dollars for FTA-funded transportation contracts, before and after May 1, 2006, and for locally-funded contracts, 2003–2007**

Note:

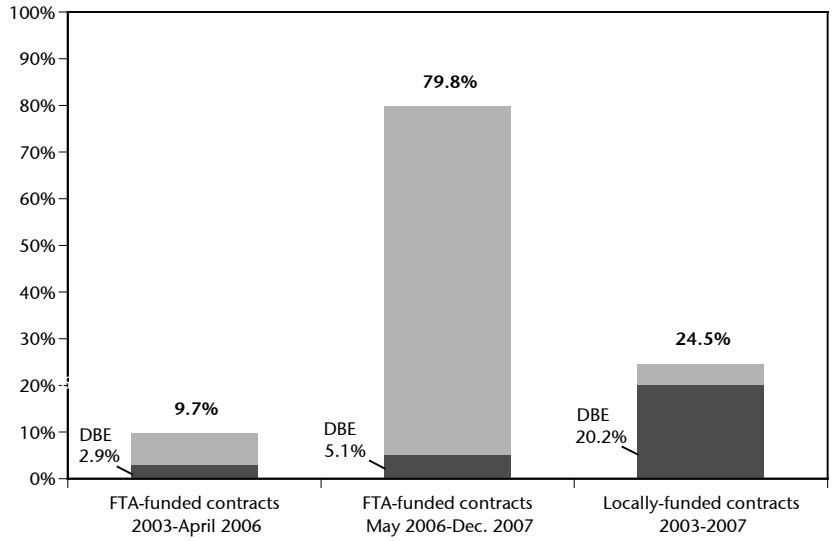
Certified DBE utilization.

Number of contracts/subcontracts analyzed is 96 for 2003–April 2006 FTA-funded contracts and 40 for May 2006–Dec. 2007 FTA-funded contracts.

For more detail and results by group, see Figures E-2 and E-3 in Appendix E.

Source:

BBC Research & Consulting from data on MTS contracts.




[10] http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm.

[11] Purchases from national markets or from firms participating in the TVM program were not included in the disparity analysis. As such, purchases of items such as bus parts are not examined in the utilization and disparity figures discussed here.

[12] "Locally-funded" contracts are those without USDOT funds. As such, some contracts with state funding could be included.

**Dollars going to all subcontractors and MBE/WBE subcontractors.** There were striking differences in subcontracting activity before and after the MTS change in implementation of the DBE contract goals program.

- About 7 percent of the dollars on FTA-funded contract dollars for 2003 through April 2006 were subcontracted. MBE/WBEs obtained 42 percent of these subcontract dollars.

- MTS indicates that no FTA-funded contracts examined in the disparity study for May 2006 through December 2007 involved subcontracts. Also, MTS indicated that there were no subcontracts involved on locally-funded contracts for 2003–2007. MTS did not operate any subcontracting goals program for locally-funded contracts.

**Disparity analysis.** There was considerable underutilization of MBE/WBEs as a whole for 2003–April 2006 when MTS had a DBE contract goals program in place. As shown in Figure VI-4, there were large disparities for WBEs (disparity index of 10), African American-owned firms (index of 4), Subcontinent Asian American-owned firms (index of 2) and Native American-owned firms (disparity index of 0) on FTA-funded contracts for 2003 through April 2006.

MBE/WBE utilization for FTA-funded contracts from May 2006 through December 2007 was 80 percent, which is very high and exceeded what would be expected given overall MBE/WBE availability for these contracts (70%). Utilization of Hispanic American- and Asian-Pacific American-owned firms greatly exceeded availability. WBEs and Native American-owned firms received FTA-funded contracts between May 2006 and December 2007, but the size of these contracts was relatively small and utilization of these firms fell below what would be expected based on their availability for MTS work. None of the 40 contracts during this time period went to African American- or Subcontinent Asian American-owned firms.

**Figure VI-4.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA-funded transportation contracts, before and after May 2006**

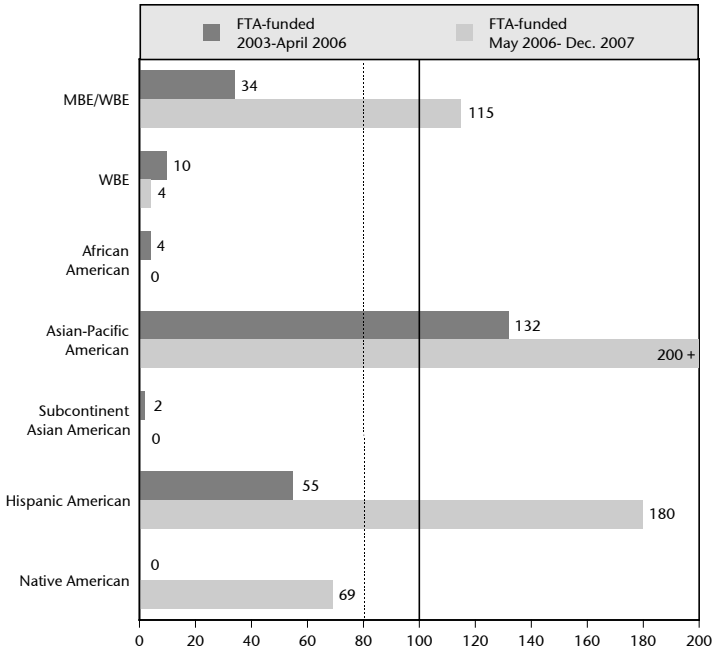
Note:

Number of contracts/subcontracts analyzed is 96 for FTA-funded 2003–April 30, 2006 and 40 for FTA-funded May 2006–Dec. 2007.

For more detail, see Figure E-2 and E-3 in Appendix E.

Source:

BBC Research & Consulting.



BBC was able to analyze 38 locally-funded contracts in the procurement areas examined in the disparity study. Overall MBE/WBE utilization fell short of what would be expected from BBC's availability analysis for these contracts. About 25 percent of locally-funded contract dollars went to MBE/WBEs compared with overall MBE/WBE availability for these contracts of 40 percent (disparity index of 59).

Figure VI-5 compares disparity indices for specific MBE/WBE groups for 2003-April 2006 FTA-funded contracts (darker bar) and 2003-2007 locally-funded contracts (lighter bar). There were disparities for locally-funded contracts for the two groups that did not receive any of these 38 contracts: African American-owned firms and Subcontinent Asian American-owned firms. Also, utilization of WBEs was considerably below availability (disparity index of 4).

Utilization of Asian-Pacific American owned-firms and Native American-owned firms on MTS locally-funded contracts substantially exceeded availability. Utilization of Hispanic American-owned firms was in line with availability for locally-funded contracts.

**Figure VI-5.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on FTA- and locally- funded transportation contracts**

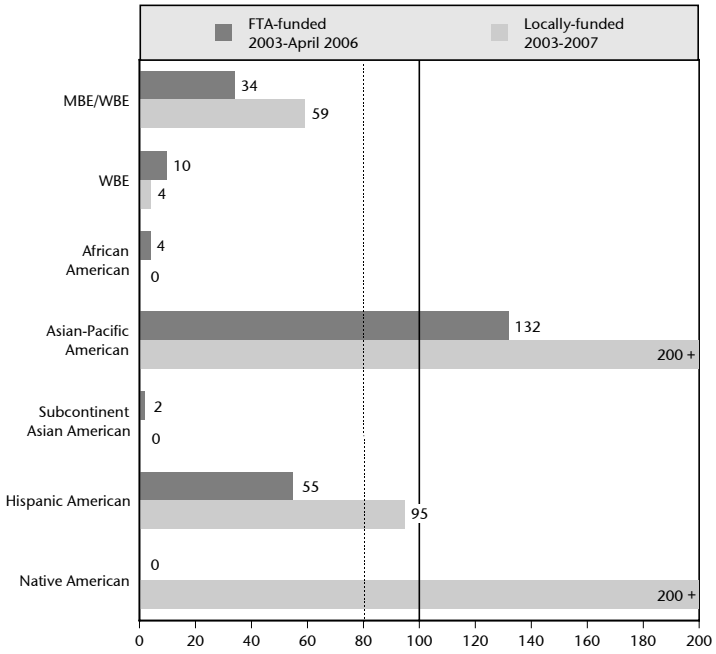
Note:

Number of contracts/subcontracts analyzed is 96 for FTA-funded and 38 for locally-funded contracts.

For more detail, see Figure E-2 and E-4 in Appendix E.

Source:

BBC Research & Consulting.




**Qualitative information.** The information from in-depth personal interviews and other sources summarized in this section and reviewed in detail in Appendix B includes perceptions by some individuals that race and gender discrimination presents barriers to minority- and women-owned firms. Others expressed the view that there were currently no disadvantages due to race or gender ownership of a business.

**b. Information about state, local, or private contracting in analogous areas where contract goals are not used. What is the extent of participation of minority or women-owned businesses in programs without goals?** The five Consortium agencies participating in the Southern California Regional Disparity Study make purchases within the same local transportation contracting market, and have operated and then discontinued DBE goals/good faith efforts programs. (MTS comprises a very small portion of the total Consortium dollars examined.)

**Overall utilization of minority- and women-owned firms.** A combined disparity analysis from BBC's studies for these agencies, including MTS, is presented in Figure VI-6.

- Minority- and women-owned firms obtained 16.7 percent of Consortium agency FTA-funded contract dollars from 2003 through the time that agencies discontinued use of their DBE contract goals/good faith efforts programs (which varied from March/April to September 2006).

- After the change in the program, MBE/WBE utilization on FTA-funded contracts was 29.7 percent.

- MBE/WBE utilization for 2003–2007 locally-funded Consortium contracts was 15.4 percent.

**Figure VI-6.**
**MBE/WBE share of Consortium agency prime/subcontract dollars for FTA-funded transportation contracts, before and after change in DBE contract goals, and for locally-funded contracts, 2003–2007**

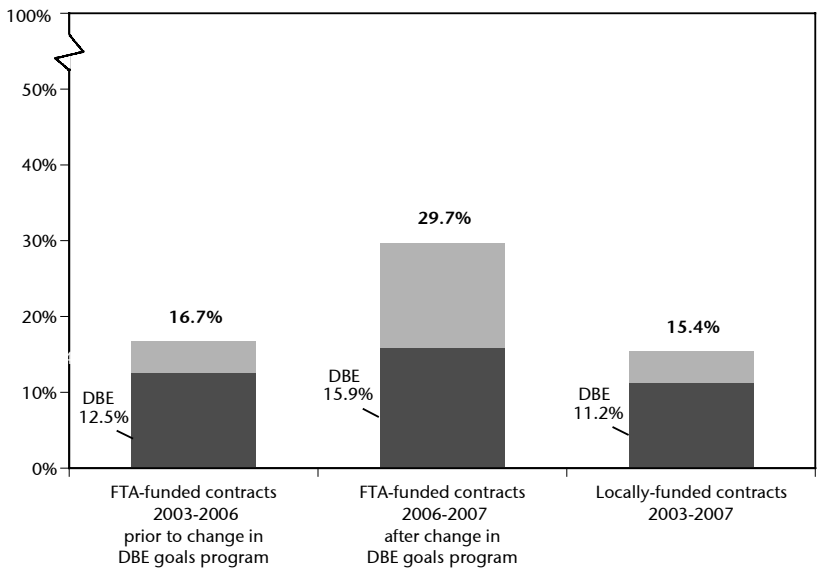
Note:

Certified DBE utilization.

Number of contracts/subcontracts analyzed is 4,088 for 2003–2006 FTA-funded contracts prior to change in DBE contract goals program, 1,290 for 2006–Dec. 2007 FTA-funded contracts after the change in program, and 2,039 for 2003-2007 locally-funded contracts.

Source:

BBC Research & Consulting from data on LACMTA, MTS, OCTA, SANDAG and SCRRA contracts.



**Disparity analysis.** BBC compared combined MBE/WBE utilization for Consortium agencies (by group) with the level of utilization expected based on a combined availability analysis for Consortium contracts. As illustrated in Figure VI-7, there was no disparity in Consortium utilization of MBE/WBEs, overall, for FTA-funded contracts during the time when the DBE contract goals/good faith efforts program was in place at each agency. However, there were disparities for WBEs and African American- and Subcontinent Asian American-owned firms.

When examining FTA-funded contracts from the period in 2006 when agencies discontinued DBE contract goals/good faith efforts to the end of 2007, there were no overall disparities for MBE/WBEs. Figure VI-8 does indicate disparities for WBEs and African American- and Native American-owned firms (disparity indices less than 80) for this time period. Utilization was somewhat below availability for Hispanic American-owned firms (disparity index of 86).

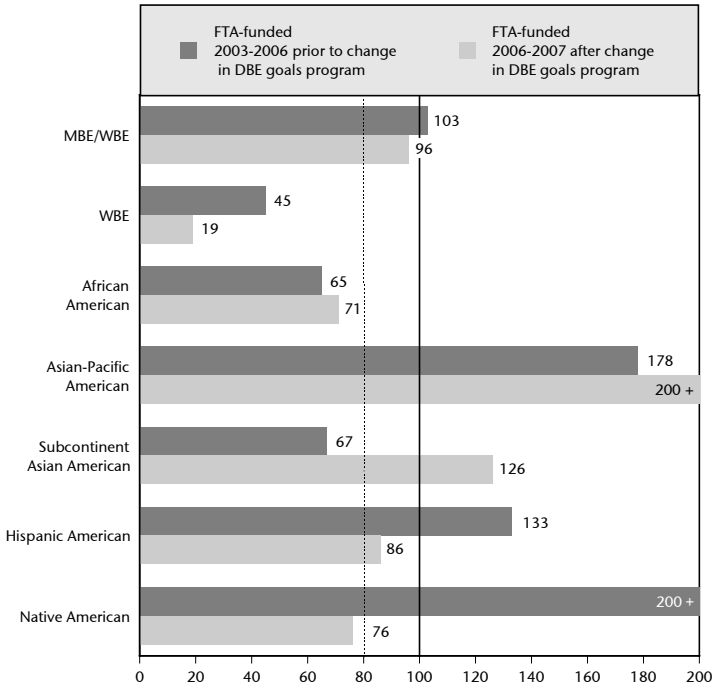
**Figure VI-7.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on Consortium FTA-funded transportation contracts before and after change in DBE contract goals/good faith efforts program, 2003–2007**

Note:

Number of contracts/subcontracts analyzed is 4,088 for2003–2006 FTA-funded contracts prior to change in DBE contract goals program and 1,290 for 2006–Dec. 2007 FTA-funded contracts after the change in program.

Source:

BBC Research & Consulting.



For locally-funded Consortium contracts, utilization of MBE/WBEs was about 60 percent of what would be expected based on MBE/WBE availability for these contracts. Disparities were identified for each MBE/WBE group except for African American-owned firms.

Figure VI-8 compares disparity results for locally-funded contracts with results for FTA-funded contracts when DBE contract goals/good faith efforts programs were in place.

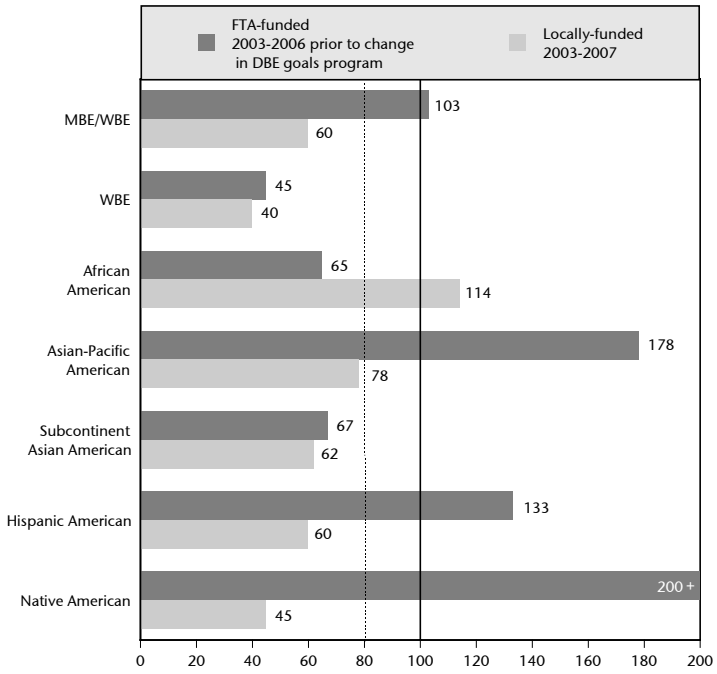
**Figure VI-8.**
**Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on Consortium 2003–2006 FTA-funded contracts with DBE contract goals/good faith program and 2003–2007 locally-funded transportation contracts**

Note:

Number of contracts/subcontracts analyzed is 4,088 for2003–2006 FTA-funded contracts prior to change in DBE contract goals program and 2,039 for 2003-2007 locally-funded contracts.

Source:

BBC Research & Consulting.




For locally-funded contracts, disparities in the overall utilization of MBE/WBEs were found for construction, engineering, and other goods and services.

**c. Race- and gender-neutral remedies available to MTS.** MTS has implemented a number of race- and gender-neutral remedies and partners with other organizations serving small businesses in Southern California. s. Figure VI-9, on the following page, describes some of these activities in the local marketplace.

In addition to its ongoing efforts and being able to refer firms to other local resources, there may be other race- and gender-neutral remedies available to MTS.

**Figure VI-9.**
**Examples of small business assistance and other neutral programs available in Southern California**

| Neutral remedies | |
|---|---|
| Technical assistance | Technical assistance including small business training is widely available throughout Southern California. Examples range from general assistance from providers such as SCORE to industry-specific training such as the California Construction Contracting Program. Some programs focus on market development assistance and use of electronic media and technology are available through organizations such as the Pace Business Development Center and Procurement Technical Assistance Centers. |
| Small business finance | Small business financing is available through several local agencies within Southern California. For example, the Pace Business Development Center in Los Angeles supports start-ups with loan package preparation and capital acquisition through financial institutions guaranteed by the SBA. The California Southern Small Business Development Corporation also offers financing assistance with the support of the State of California. |
| Bonding programs | Programs such as the SBA Bond Guarantee Program provide bid, performance and payment bond guarantees for individual contracts. The City of Los Angeles Bonding Assistance Program offers individual counseling and training in addition to bid, performance and bond guarantees.<br><br>Training on how to obtain a bond is also provided by a number of different agencies including the San Diego County Water Authority and the Los Angeles Unified School District. The school district's program, BondWorks, prepares contractors to manage cash flow and taxes and provides training on credit worthiness criteria in the bond approval process. |
| Mentor-protégé programs | The Associated General Contractors (AGC) of San Diego and the City of San Diego have created a joint mentor-protégé program in an effort to increase diversity and develop new and emerging businesses in the construction industry.<br><br>Calmentor supports mentor-protégé relationships in the architecture and engineering industry.<br><br>SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for federal contracts.<br><br>The University of Southern California is starting a mentor-protégé program to assist small businesses develop the capacity to perform as subcontractors and suppliers. |
| Prime/subcontractor connections | A number of different organizations work to pair prime contractors and emerging subcontractors through networking events and local agency subcontractor outreach programs. Examples include the San Diego County Water Authority - Paths to Partnerships event and Operation Opportunity hosted by the San Diego Supplier Development Council. Other subcontractor programs include the City of Los Angeles Public Works Bureau and the City of San Diego subcontractor outreach programs. |

**Subcontracting minimum.** MBE/WBEs accounted for 42 percent of dollars going to subcontractors on MTS FTA-funded contracts for 2003 through April 2006. About 7 percent of the dollars on FTA-funded contract dollars during this period were subcontracted. It appears that there were no subcontracts on MTS FTA-funded contracts for May 2006 through December 2007 or on MTS locally-funded contracts.

The MTS Disadvantaged Business Program includes "encouraging prime contractors to subcontract portions of work that they might otherwise perform themselves."[13] To better accomplish this aspect of its program, MTS could consider an initiative similar to the Mandatory Subcontracting Minimum (MSM) provisions used by the City of Los Angeles:

- On certain contracts that might involve subcontracting, MTS would set a percentage to be subcontracted based on analysis of the work to be performed and experience from similar contracts (different types of projects involve relatively greater or smaller amounts of subcontracting). For some contracts, MTS would set a 0 percent MSM (or just no MSM).

- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.

- If an MSM program is adopted, MTS would need to incorporate flexibility in the program, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

**Small business subcontracting program.** A program similar to the MSM program may be sufficient, but MTS could also consider a small business subcontracting goals program. The program would operate like the DBE contract goals program, except that firms would be certified based on criteria that do not include race/ethnicity/gender.

**Small business program for prime contractors.** MTS could also consider a small business program that encourages certified small business participation as prime contractors. Efforts could include solicitation of small businesses for bids and extra evaluation points for small business prime consultants responding to Requests for Proposals and Requests for Qualifications. The use of preferences for small businesses participating as prime contractors is consistent with guidelines that USDOT sets forth in 49 CFR Part 26: "If it will help achieve the objective of the DBE program, a recipient may use a small business set-aside as one of its race-neutral measures."[14] The City of Los Angeles operates a small business programs that MTS could evaluate.

**Limited contract sizes.** MBE/WBEs obtained about 32 percent of the dollars of MTS small prime contracts (less than $100,000) from 2003 through 2007, only slightly less than what would be expected based on availability for this work. MTS should continue to evaluate when contracts can be divided into multiple smaller contracts.

[13] Disadvantaged Business Enterprise Program of the San Diego Metropolitan Transit System, August 2005, p.13.

[14] http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc.

**Other MTS neutral measures.** MTS includes a number of additional neutral measures in its Disadvantaged Business Program, including:

- Requiring prompt payment of subcontractors (Metro includes a prompt payment clause in each FTA-funded contract).
- Assuring that bidding and contract requirements facilitate participation by DBEs and other small businesses, including ensuring that bid notices and requests for proposals are available in a timely manner.
- Providing outreach to firms and community organizations to advise them of opportunities.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing, technical assistance and other services.
- Carrying out information and communications programs and other support services to facilitate consideration of DBEs and other small businesses.
- Ensuring distribution of the MTS DBE directory and assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic technology.
- Advise prospective contractors regarding new contracts and the areas for possible subcontracting and of the availability of ready, willing and able subcontractors, including DBE firms, to perform such work.

MTS will also need to further develop a comprehensive electronic bidders list. It might use information on potential bidders developed through this disparity study in adding to this list.

MTS will need to continue these and other neutral efforts per 49 CFR Part 26. There are a number of opportunities for MTS to partner with other agencies and small business organizations in San Diego and other parts of Southern California. MTS can be a co-sponsor and referral source for these initiatives, including mentor-protégé programs and other business development efforts. Fully implementing these initiatives may require MTS to commit additional financial resources to these activities.

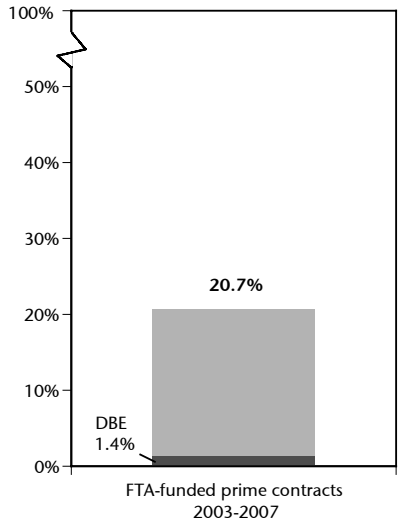
**d. Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?** When MTS changed its implementation of the goals program, it no longer required contractors to commit to a certain amount of DBE participation.

**e. To what extent have DBE primes participated in the recipient's programs in the past?** MBE/WBEs accounted for 21 percent of prime contract dollars on FTA-funded contracts from 2003 through 2007 (see Figure VI-10). Participation of certified DBEs was about 1 percent of FTA-funded prime contract dollars. One Hispanic American-owned firm that was not DBE-certified represents much of the MBE/WBE utilization.

**Figure VI-10.**
**MBE/WBE share of prime contract dollars for FTA-funded transportation contracts, 2003–2007**

Note:
Certified DBE utilization.
Number of prime contracts analyzed is 97 for 2003–2007.
For more detail and results by group, see Figure E-46 in Appendix E.

Source:
BBC Research & Consulting from data on MTS contracts.

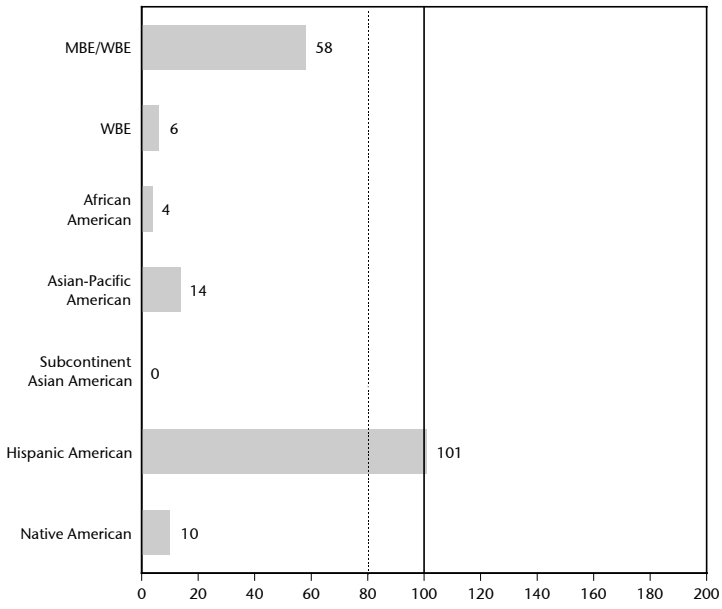



As shown in Figure VI-11, utilization of MBE/WBEs as prime contractors on FTA-funded contracts was substantially less than what would be expected based on availability for these contracts. Utilization of Hispanic American-owned firms was in line with availability, but there were disparities for each other group

**Figure VI-11.**
**Disparity indices for MBE/WBE utilization on FTA-funded prime contracts, 2003–2007**

Note:
Number of prime contracts analyzed is 97 for 2003–2007.
For more detail and results by group, see Figure E-46 in Appendix E.

Source:
BBC Research & Consulting.



Section V of this report examines MTS prime contract utilization in more detail.

**f. To what extent has the recipient oversubscribed its DBE goals in the past?** BBC independently examined contract awards for MTS FTA-funded contractors for the period from May 2006 through December 2007. As previously shown (see Figure VI-3), minority- and women-owned firms received 80 percent of contract dollars. Only counting certified DBEs, utilization was 5 percent of FTA contract award dollars. (There were no subcontracts identified for these contracts.)

**Overall percentage to be achieved through neutral means.** Through December 2007, MTS's overall utilization of minority- and women-owned firms for FTA-funded contracts after its change in the DBE subcontracting goals program was 80 percent, exceeding the level expected based on availability of MBE/WBEs. This information suggests that MTS should consider meeting its annual aspirational goal entirely through neutral means, in accordance with 49 CFR Section 26.51.

However, much of this MBE utilization was with two groups — Asian-Pacific American-owned firms and Hispanic American-owned firms — and substantial disparities persisted for other MBE/WBE groups. MTS should consider how it might meet as much as possible of its annual aspirational goal through neutral means and also address disparities for WBEs and African American-, Subcontinent Asian American- and Native American-owned firms in accordance with federal regulations in 49 CFR Section 26.51. Additional neutral efforts include the following.

**Potential effect of subcontracting programs.** MTS could apply subcontracting minimums to contracts that might have meaningful subcontracting opportunities. In addition to this program or in its place, MTS could develop a small business subcontract goals program.

Because many MTS procurements are for goods and services that may have few or no subcontracting opportunities, subcontracting programs may only have a small impact on overall opportunities for minority- and women-owned firms.

**Possible effect of other programs.** MTS could consider implementing a small business program for prime contracts. For the reasons discussed above, a program for contractors and vendors bidding as primes could have a greater impact on opportunities for small businesses, including MBE/WBEs. BBC was unable to quantify the potential impact of this program on the DBE groups that show disparities in MTS FTA-funded contracts from the information available in the disparity study. A trial implementation of the program could provide MTS more information to gauge its effectiveness.

**Outreach and expansion of the MTS bidders list.** Addressing the disparities identified for certain DBE groups may also require additional outreach to small businesses, including these DBE groups, and further development of the MTS bidders list.

**Minority- and women-owned firms that are not currently certified as DBEs.** MTS will need to develop additional mechanisms to track the effectiveness of neutral programs. In addition to reporting utilization of certified DBEs, MTS should track utilization of all minority- and women-owned firms.[15] MTS should examine utilization as prime contractors and subcontractors on both FTA- and locally-funded contracts. Many minority- and women-owned firms are not DBE-certified. Tracking of MBE/WBEs (by group) will be necessary to gauge overall MTS success in eliminating

[15] Including MBE/WBEs that are self-identified.

any barriers to participation that may be due to the race/ethnicity/gender of firm ownership. This tracking begins with MTS coding business ownership status in its bidder/vendor data. The data developed as part of this disparity study may provide a first step towards comprehensive vendor information.

### 3. Implementation of the Federal DBE Program

The Federal DBE Program requires MTS to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. In making a policy decision to engage in any other remedy that targets DBEs, if it determines such a remedy is needed, MTS should consider this disparity study and additional pertinent information.

**Additional neutral efforts.** A number of additional race- and gender-neutral efforts are discussed above.

**Advisory DBE goals.** Since May 1, 2006, MTS has had a policy of being able to set "advisory goals" for DBE participation on FTA-funded contracts that had subcontracting opportunities. MTS does not require bidders to meet those goals or show good faith efforts. MTS might consider discontinuing this program as it appears to have that the subcontracting minimum or small business subcontract goals program might be more effective[16]

**DBE goals/good faith efforts.** If after evaluating the effectiveness of neutral remedies MTS considers reinstating DBE contract goals/good faith efforts, it will want to carefully examine which groups exhibit disparities in contracts without the DBE subcontracting goals/good faith efforts program.

Guidance from the FTA indicates how a local transportation agency would operate any future DBE contract goals program in which eligibility is limited to certain race/ethnic/gender DBE groups. [17] One approach would be for MTS to limit eligibility for meeting DBE contract goals to race/ethnic/gender groups for which there were substantial disparities considering contracts when no goals/good faith efforts program was in place. DBEs owned by groups not eligible to meet contract goals would still participate in MTS contracting in all other ways (for example, meeting a subcontracting minimum or potentially participating in a small business prime contractor program). MTS would include all DBE groups when preparing DBE participation reports.

If MTS were to adopt this approach, it would need to request a waiver from USDOT to limit participation in this program component to certain groups.

MTS should also consider whether or not any type of subcontracting goals program would be an effective remedy given the limited subcontracting opportunities it appears to have in its FTA-funded contracts.

**Over-concentration of DBEs in certain fields.** BBC examined the issue of over-concentration of DBEs in certain fields per 49 CFR Part 26.33. BBC did not identify any areas of over-concentration for MTS.

[16] MTS should also be aware that similar voluntary project goals have been deemed by certain courts to be race- and gender-conscious, while other courts have regarded such efforts as giving no preference based on race or gender.

[17] http://www.fta.dot.gov/documents/March_23_FRN_pdf_(website).pdf.

**Periodic review/tracking of MBE/WBE as well as DBE utilization.** Ongoing review of program effectiveness is a requirement of 49 CFR Part 26.

MTS needs additional metrics to track success beyond those suggested in the Federal DBE Program, including careful tracking of MBE/WBEs (not just DBE participation) in both FTA-funded and locally-funded contracts.

If MTS chooses to pursue a solely race- and gender-neutral implementation of the Federal DBE Program, it should monitor whether or not this programs remedy disparities in the utilization of specific groups of minority- and women-owned firms. MTS may need to consider adding certain race- and gender-conscious remedies in the future if a solely neutral program is not effective in eliminating disparities in its utilization of minority- and women-owned firms on FTA-funded contracts.

### 4. Programs Applicable to Locally-funded Contracts

**Neutral remedies.** MTS could consider applying the neutral remedies explored here to its locally-funded contracts as well as FTA-funded contracts. For example, a small business subcontracting program might be applied, as needed, across areas of MTS contracts.

**Race- and gender-based remedies.** At present, Proposition 209 (Article I, Section 31 of the California Constitution) prohibits MTS from implementing programs including race, ethnic or gender preferences related to its locally-funded contracts. However, MTS should monitor developments in a case involving San Francisco's implementation of a race- and gender-conscious program for its locally-funded contracts.[18] At the time of this disparity study report, the issues raised in this case were under review by the California Supreme Court. Appendix A describes the rulings in this case to date.

[18] *Coral Construction, Inc. v. City and County of San Francisco*, 57 Cal.Rptr.3d 781 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007).

# APPENDIX A.
# Legal Framework and Analysis

# APPENDIX A.
# Legal Framework and Analysis

Appendix A provides the legal framework and analysis for the Consortium agency disparity studies. A separate table of contents for Appendix A is provided on the following pages.

# Table of Contents


I. Introduction ..... 5

II. U.S. Supreme Court Cases ..... 6

A. City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) ..... 6

B. Adarand Constructors, Inc. v. Pena ("Adarand I"), 515 U.S. 200 (1995) ..... 7

III. The Legal Framework Applied to the Federal DBE Program and its Implementation ..... 7

A. Strict Scrutiny Analysis ..... 9

1. The Compelling Governmental Interest Requirement ..... 9

2. The Narrow Tailoring Requirement ..... 11

B. Intermediate Scrutiny Analysis ..... 16

C. Proposition 209 and the Federal Program Exception ..... 17

IV. Recent Decisions Involving the Federal DBE Program and Recipients of Federal Funds That Impact the Consortium Agencies' DBE Programs ..... 19

A. Recent Decisions in the Ninth Circuit ..... 19

1. Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006) ..... 19

1A. Western States Paving Co. v. Washington DOT, US DOT and FHWA, 2006 WL 1734163 (W.D. Wash. June 23, 2006) ..... 23

B. Recent Decisions in Other Circuits ..... 24

1. Northern Contracting, Inc. v. Illinois, 473 F.3d 715 (7th Cir. 2007) ..... 24

1A. Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007) ..... 27

1B. Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004) ..... 32

2. Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004) ..... 34

2A. Sherbrooke Turf, Inc. v. Minnesota DOT, 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unpublished opinion), aff'd 345 F.3d 964 (8th Cir. 2003) ..... 37

3. Gross Seed Co. v. Nebraska Department of Roads, Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), aff'd 345 F. 3d 964 (8th Cir. 2003) ..... 38

4. Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta, 532 U.S. 941, 534 U.S. 103 (2001) ..... 39

5. Houston Contrs. Ass'n v. Metro. Transit Auth., 189 F.3d 467 (5th Cir. 1999) ..... 40

6. Klaver Construction, Inc. v. Kansas DOT, 211 F. Supp. 2d 1296 (D. Kan. 2002) ..... 41

V. Recent Decisions and Authorities Involving Federal Procurement That May Impact The Consortium Agencies' DBE Enterprise Programs. ..... 41

A. Rothe Development Corp. v. U.S. Department of Defense, 545 F.3d 1023 (Fed. Cir. 2008) ..... 41

B. Dynalantic Corp. v. United States Dept. of Defense, 503 F.Supp. 2d 262 (D.D.C. 2007) ..... 50

C. Federal Procurement After "Adarand" (USCCR Report September 2005) ..... 52

VI. Decisions Involving State or Local Government MBE/WBE Programs That May Impact the Consortium Agencies' DBE Programs ..... 56

A. Decisions in the Ninth Circuit ..... 56

1. Monterey Mechanical v. Wilson, 125 F.3d 702 (9th Cir. 1997) ..... 56

2. Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991) ..... 57

3. Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity ("AGCC"), 950 F.2d 1401 (9th Cir. 1991) ..... 58

B. California State Court Decisions ..... 58

1. Coral Construction, Inc. v. City and County of San Francisco, 57 Cal.Rptr.3d 781 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007) ..... 58

2. C & C Construction, Inc. v. Sacramento Municipal Utility District ("SMUD"), 122 Cal. App. 4th 284 (2004) ..... 61

3. Connerly v. State Personnel Board, 92 Cal. App. 4th 16 (2001) ..... 63

4. High-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal. 4th 537, 101 Cal. Rptr.2d 653, 12 P.3d 1068 (Cal. 2000) ..... 65

5. Cornelius v. L.A. County Metro. Transp. Auth., 49 Cal App. 4th 1761 (1996) ..... 66

C. Decisions in Other Circuits ..... 67

1. Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc., 460 F.3d 859 (7th Cir. 2006) ..... 67

2. Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development, 438 F.3d195 (2d Cir. 2006) ..... 68

3. Virdi v. Dekalb County School District, 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion) ..... 69

4. Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari) ..... 71

5. In Re City of Memphis, West Tennessee Chapter of Associated Builders and Contractors, Zellner Construction Company, Inc. v. City of Memphis, 293 F. 3d 345 (6th Cir. 2002) ..... 83

6. Builder's Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001) ..... 83

7. Associated Gen. Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), aff'g Case No. C2-98-943, 1998 WL 812241 (S.D. Ohio 1998) ..... 84

8. W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999) ..... 84

9. Eng'g Contractors Ass'n of S. Florida v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997) ..... 84

10. Contractors Ass'n of E. Pa. v. City of Philadelphia, 91 F.3d 586 (3d Cir. 1996) ..... 95

11. Thomas v. City of Saint Paul, 526 F. Supp. 2d 959 (D. Minn 2007), affirmed, 2009 WL 777932 (8th Cir. March 26, 2009) (unpublished opinion) ..... 95

12. Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307 (N.D. Fla. 2004) ..... 97

13. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F. Supp. 2d 1305 (S.D. Fla. 2004) ..... 99

14. The Builders Ass'n of Greater Chicago v. The City of Chicago, 298 F. Supp. 2d 725 (N.D. Ill. 2003) ..... 104

15. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 218 F. Supp. 2d 749 (D. Md. 2002) ..... 105

16. Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000) ..... 105

17. Associated Gen. Contractors v. Drabik, 50 F. Supp. 2d 741 (S.D. Ohio 1999) ..... 106

18. Phillips & Jordan, Inc. v. Watts, 13 F. Supp. 2d 1308 (N.D. Fla. 1998) ..... 106

19. H.B. Rowe Corp., Inc. v. W. Lyndo Tippett, North Carolina DOT, et al; 589 F. Supp. 2d 587 (E.D.N.C. 2008) ..... 107

# APPENDIX A.
# Legal Framework and Analysis

## I. Introduction

In this section Holland & Knight LLP analyzes recent cases regarding the Transportation Equity Act for the 21st Century (TEA-21)[1] the United States Department of Transportation regulations promulgated to implement the TEA-21 known as the Federal Disadvantaged Business Enterprise ("DBE") Program,[2] and local minority and women-owned business enterprise ("MBE/WBE") programs to provide a summary of the legal framework for the disparity study as applicable to the Southern California Regional Consortium (the "Consortium"). This section begins with a review of the landmark United States Supreme Court decision in City of Richmond v. J.A. Croson.[3] Croson sets forth the strict scrutiny constitutional analysis applicable in the legal framework for conducting a disparity study.

This section also notes the United States Supreme Court decision in Adarand Constructors, Inc. v. Pena,[4] ("Adarand I"), which applied the strict scrutiny analysis set forth in Croson to federal programs that provide federal assistance to a recipient of federal funds. The Supreme Court's decision in Adarand I, provides the basis for the legal analysis in connection with the Consortium's participation in the Federal DBE Program.

The legal framework then analyzes and applies significant recent court decisions that have followed, interpreted, and applied Croson and Adarand I to the present and that are applicable to the Consortium's disparity study and the strict scrutiny analysis. In particular, this analysis applies the recent Ninth Circuit decision in Western States Paving Co. v. Washington State DOT,[5] in which the Ninth Circuit held that mere compliance with the Federal DBE Program, absent independent and sufficient state-specific evidence of discrimination in the state's transportation contracting industry market, did not satisfy the strict scrutiny analysis. The analyses of Western States Paving Co., and these other recent cases are applicable to the Consortium and the disparity study because they are the most recent and significant decisions by federal courts setting forth the legal framework applied to the Federal DBE Program and its implementation by recipients of Federal financial assistance governed by 49 CFR Part 26.[6] They also are applicable in terms of the preparation of DBE Programs by the members of the Consortium submitted in compliance with the Federal DBE Regulations.

---

[1] Pub L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1156; preceded by Pub L. 105-178, Title I, § 1101(b), June 9, 1998, 112 Stat. 107.

[2] 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs ("Federal DBE Program").

[3] City of Richmond v. J.A. Croson, 488 U.S. 469 (1989).

[4] Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995).

[5] Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005).

[6] See Northern Contracting, Inc. v. Illinois DOT, 473 F.3d 715 (7th Cir. 2007); Sherbrooke Turf, Inc. v. Minn. DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004); Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) ("Adarand VII").

Following Western States Paving, the USDOT has recommended the use of disparity studies by recipients of Federal financial assistance to examine whether or not there is evidence of discrimination and its effects, and how remedies might be narrowly tailored in developing their DBE Program to comply with the Federal DBE Program.[7] The USDOT suggests consideration of both statistical and anecdotal evidence. The USDOT suggests recipients should ascertain evidence for discrimination and its effects separately for each group presumed to be disadvantaged in 49 CFR Part 26. The USDOT's Guidance provides that recipients should consider evidence of discrimination and its effects.[8] The USDOT's "Guidance" is recognized by the federal regulations as "valid and binding, and constitutes the official position of the Department of Transportation."[9]

The Federal Transit Administration (the "FTA") issued its notice of implementation of the USDOT's Guidance for FTA recipients of federal funds and for participants of the Federal DBE Program, which took effect on August 21, 2006.[10] The FTA, on March 23, 2006, had published a Federal Register notice requesting comments on its implementation of the USDOT's Guidance.[11] The August 21, 2006 notice from the FTA provides its policy and information on how FTA will administer the DBE Program for FTA recipients in light of the Western States Paving decision and the USDOT's Guidance.[12]

## II. U.S. Supreme Court Cases

### A. City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)

In Croson, the U.S. Supreme Court struck down the City of Richmond's "set-aside" program as unconstitutional because it did not satisfy the strict scrutiny analysis applied to "race based" governmental programs. J.A. Croson Co. ("Croson") challenged the City of Richmond's minority contracting preference plan, which required prime contractors to subcontract at least 30 percent of the dollar amount of contracts to one or more minority business enterprises. In enacting the plan, the City cited past discrimination and an intent to increase minority business participation in construction projects as motivating factors.

The Supreme Court held the City of Richmond's "set-aside" action plan violated the Equal Protection Clause of the Fourteenth Amendment. The Court applied the "**strict scrutiny**" standard, generally applicable to any race-based classification, which requires a governmental entity to have a "**compelling governmental interest**" in remedying past identified discrimination and that any program must be "**narrowly tailored**" to achieve the goal of remedying the identified discrimination.

---

[7] Questions and Answers Concerning Response to Western States Paving Company v. Washington State Department of Transportation (January 2006) [hereinafter USDOT Guidance], available at http://www.fhwa.dot.gov/civilrights/dbe_memo_a5.htm (last visited February 1, 2008); see 49 CFR § 26.9.

[8] Id.

[9] Id., 49 C.F.R. § 26.9.

[10] FTA Notice for DBEs; Western States Guidance for Public Transportation Providers, 71 Fed. Reg. 48579-48580 (August 21, 2006)

[11] FTA Notice for DBEs; Western States Guidance for Public Transportation Providers, 71 Fed. Reg. 14775 (March 23, 2006).

[12] FTA Notice for DBEs; Western States Guidance for Public Transportation Providers, 71 Fed. Reg. 48579-48580 (August 21, 2006).

The Court determined that the plan neither served a "compelling governmental interest" nor offered a "narrowly tailored" remedy to prior discrimination. The Court found no "compelling governmental interest" because the City had not provided "a strong basis in evidence for its conclusion that [race-based] remedial action was necessary." The Court held the City presented no direct evidence of any race discrimination on its part in awarding construction contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors. The Court also found there were only generalized allegations of societal and industry discrimination coupled with positive legislative motives. The Court concluded that this was insufficient evidence to demonstrate a compelling interest in awarding public contracts on the basis of race.

Similarly, the Court held the City failed to demonstrate that the plan was "narrowly tailored" for several reasons, including because there did not appear to have been any consideration of race-neutral means to increase minority business participation in city contracting, and because of the over inclusiveness of certain minorities in the "preference" program (for example, Aleuts) without any evidence they suffered discrimination in Richmond.

The Court further found "if the City could show that it had essentially become a 'passive participant' in a system of racial exclusion practiced by elements of the local construction industry … [i]t could take affirmative steps to dismantle such a system." The Court held that "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." The Supreme Court noted that it did not intend its decision to preclude a state or local government from "taking action to rectify the effects of identified discrimination within its jurisdiction."

### B. Adarand Constructors, Inc. v. Pena ("Adarand I"), 515 U.S. 200 (1995)

In Adarand I, the U.S. Supreme Court extended the holding in Croson and ruled that all federal government programs that use racial or ethnic criteria as factors in procurement decisions must pass a test of strict scrutiny in order to survive constitutional muster. In the wake of Adarand I, the many affirmative action programs established by the federal government are undergoing review. Adarand I sets forth the predicate constitutional standard that applies to the Consortium's implementation of the Federal DBE Program.

## III. The Legal Framework Applied to the Federal DBE Program and its Implementation

The following provides an analysis for the legal framework focusing on key cases regarding the Federal DBE Program and local MBE/WBE programs, and their implications for a disparity study. Western States Paving, and the other recent cases discussed below, are applicable to the Consortium and the disparity study because they are decisions involving the Federal DBE Program and the implementation of the Program by recipients of Federal financial assistance through 49 CFR Part 26.[13]

[13] N. Contracting, 473 F.3d 715; Sherbrooke Turf, 345 F.3d 964; Adarand VII, 228 F.3d 1147.

After the *Adarand* decision, the U.S. Department of Justice in 1996 conducted a study of evidence on the issue of discrimination in government construction procurement contracts, which Congress relied upon as documenting a compelling governmental interest to have a federal program to remedy the effects of current and past discrimination in the transportation contracting industry for federally-funded contracts.[14] Subsequently, in 1998, Congress passed the Transportation Equity Act for the 21st Century ("TEA-21"), which authorized the United States Department of Transportation to expend funds for federal highway programs for 1998 - 2003. Pub.L. 105-178, Title I, § 1101(b), 112 Stat. 107, 113 (1998). The USDOT promulgated new regulations in 1999 contained at 49 C.F.R. Part 26 to establish the current Federal DBE Program. The TEA-21 was subsequently extended in both 2003 and 2005. The reauthorization of TEA-21 in 2005 was for a five year period from 2005 to 2009. Pub.L. 109-59, Title I, § 1101(b), August 10, 2005, 119 Stat. 1153-57.

The Federal DBE Program as amended changed certain requirements for federal aid recipients and accordingly changed how recipients of federal funds implemented the Federal DBE Program for federally-assisted contracts. The federal government determined that there is a compelling governmental interest for race- and gender-based programs at the national level, and that the program is narrowly tailored because of the federal regulations, including the flexibility in implementation provided to individual federal aid recipients by the regulations. State and local governments are not required to implement race- and gender-based measures where they are not necessary to achieve DBE goals and those goals may be achieved by race- and gender-neutral measures. 49 C.F.R. § 26.51.

The Federal DBE Program established responsibility for implementing the DBE Program to state and local government recipients of federal funds. A recipient of federal financial assistance must set an annual DBE goal specific to conditions in the relevant marketplace. Even though an overall annual 10 percent aspirational goal applies at the federal level, it does not affect the goals established by individual state or local governmental recipients. The new Federal DBE Program outlines certain steps a state or local government recipient can follow in establishing a goal, and USDOT considers and must approve the goal and the recipient's DBE program. The implementation of the Federal DBE Program is substantially in the hands of the state or local government recipient and is set forth in detail in the federal regulations, including 49 C.F.R. § 26.45.

Provided in 49 CFR § 26.45 are instructions as to how recipients of federal funds should set the overall goals for their DBE programs. In summary, the recipient establishes a base figure for relative availability of DBEs. 49 CFR § 26.45(a), (b), (c). The recipient must also determine an appropriate adjustment, if any, to the base figure to arrive at the overall goal. Id. at § 26.45(d). There are many types of evidence considered when determining if an adjustment is appropriate, according to 49 C.F.R. § 26.45(d). These include, among other types, the current capacity of DBEs to perform work on the recipient's contracts as measured by the volume of work DBEs have performed in recent years. If available, recipients consider evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, such as statistical disparities between the ability of DBEs to obtain financing, bonding, and insurance, as well as data on employment, education, and training. Id. This process, based on the federal regulations, aims to establish a goal that reflects a determination of the level of DBE participation one would expect absent the effects of discrimination. 49 C.F.R. § 26.45(b)-(d).

[14] A*ppendix*-The Compelling Interest for Affirmative Action in Federal Procurement, 61 Fed. Reg. 26,050, 26,051-63 & nn. 1-136 (May 23, 1996) (hereinafter "The Compelling Interest"); see Adarand VII, 228 F.3d at 1167-1176, citing The Compelling Interest.

Further, the Federal DBE Program requires state and local government recipients of federal funds to assess how much of the DBE goal can be met through race- and gender-neutral efforts and what percentage, if any, should be met through race- and gender-based efforts. 49 C.F.R. § 26.51.

A state or local government recipient is responsible for seriously considering and determining race- and gender-neutral measures that can be implemented. 49 C.F.R. § 26.51(b). A recipient of federal funds must establish a contract clause requiring primes to promptly pay subcontractors in the Federal DBE Program (42 C.F.R. § 26.29). The Federal DBE Program also established certain record-keeping requirements, including maintaining a bidders list containing data on contractors and subcontractors seeking federally-assisted contracts from the agency (42 C.F.R. § 26.11). There are multiple administrative requirements that recipients must comply with in accordance with the regulations. 49 C.F.R. §§ 26.21-26.37.

Federal aid recipients are to certify DBEs according to their race/gender, size, net worth and other factors related to defining an economically and socially disadvantaged business as outlined in 49 C.F.R. §§ 26.61-26.73.

## A. Strict Scrutiny Analysis

The Consortium's implementation of the Federal DBE Program is subject to the strict scrutiny constitutional analysis. The strict scrutiny analysis is comprised of two prongs:

- The program must serve an established compelling governmental interest; and
- The program must be narrowly tailored to achieve that compelling government interest.

### 1. The Compelling Governmental Interest Requirement

The first prong of the strict scrutiny analysis requires a governmental entity to have a "compelling governmental interest" in remedying past identified discrimination in order to enact a race- or ethnicity-based program. The Ninth Circuit and other federal courts have held that, with respect to the Federal DBE Program, recipients of federal funds do not need to independently satisfy this prong because Congress has satisfied the compelling interest test of the strict scrutiny analysis.[15] The federal courts have held that Congress had ample evidence of discrimination in the transportation contracting industry to justify the Federal DBE Program (TEA-21), and the federal regulations implementing the program (49 C.F.R. Part 26).[16]

---

[15] N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1176.

[16] Id. In the case of Rothe Dev. Corp. v. U.S. Dept. of Defense, 545 F.3d 1023 (Fed. Cir. 2008), the Federal Circuit Court of Appeals pointed out it had questioned in its earlier decision whether the evidence of discrimination before Congress was in fact so "outdated" so as to provide an insufficient basis in evidence for the Department of Defense program (i.e. whether a compelling interest was satisfied). 413 F.3d 1327 (Fed. Cir. 2005). The Federal Circuit Court of Appeals after its 2005 decision remanded the case to the district court to rule on this issue. Rothe considered the validity of race- and gender-conscious Department of Defense ("DOD") regulations (2006 Reauthorization of the 1207 Program). The decisions in N. Contracting, Sherbrooke Turf, Adarand VII, and Western States Paving held the evidence of discrimination nationwide in transportation contracting was sufficient to find the Federal DBE Program on its face was constitutional. On remand, the district court in Rothe on August 10, 2007 issued its order denying Plaintiff Rothe's Motion for Summary Judgment and granting Defendant United States Department of Defense's Cross-Motion for Summary Judgment, holding the 2006 Reauthorization of the 1207 DOD Program constitutional. Rothe Devel. Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007). The district court found the data contained in the Appendix (The Compelling Interest, 61

Specifically, the federal courts found Congress "spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry."[17] The evidence found to satisfy the compelling interest standard included numerous congressional investigations and hearings, and outside studies of statistical and anecdotal evidence (e.g. disparity studies).[18] The evidentiary basis on which Congress relied to support its finding of discrimination includes:

- **Barriers to minority business formation**. Congress found that discrimination by prime contractors, unions, and lenders has woefully impeded the formation of qualified minority business enterprises in the subcontracting market nationwide, noting the existence of "old boy" networks, from which minority firms have traditionally been excluded, and the race-based denial of access to capital, which affects the formation of minority subcontracting enterprise.[19]

- **Barriers to competition for existing minority enterprises.** Congress found evidence showing systematic exclusion and discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies precluding minority enterprises from opportunities to bid. When minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. Congress found evidence of the same prime contractor using a minority business enterprise on a government contract not using that minority business enterprise on a private contract, despite being satisfied with that subcontractor's work. Congress found that informal, racially exclusionary business networks dominate the subcontracting construction industry.[20]

- **Local disparity studies.** Congress found that local studies throughout the country tend to show a disparity between utilization and availability of minority-owned firms, raising an inference of discrimination.[21]

- **Results of removing affirmative action programs.** Congress found evidence that when race-conscious public contracting programs are struck down or discontinued, minority business participation in the relevant market drops sharply or even disappears, which courts have found strongly supports the government's claim that there are significant barriers to minority competition, raising the specter of discrimination.[22]

---

Fed. Reg. 26050 (1996)), the Urban Institute Report, and the Benchmark Study – relied upon in part by the courts in Sherbrooke Turf, Adarand VII, and Western States Paving in upholding the constitutionality of the Federal DBE Program – was "stale" as applied to and for purposes of the 2006 Reauthorization of the 1207 DOD Program. This district court finding was not appealed or considered by the Federal Circuit Court of Appeals. 545 F.3d 1023, 1037. Section V.

[17] Sherbrooke Turf, 345 F.3d at 970, (citing Adarand VII, 228 F.3d at 1167 – 76); Western States Paving, 407 F.3d at 992-93.

[18] See, e.g., Adarand VII, 228 F.3d at 1167– 76; see also Western States Paving, 407 F.3d at 992 (Congress "explicitly relied upon" the Department of Justice study that "documented the discriminatory hurdles that minorities must overcome to secure federally-funded contracts").

[19] Adarand VII, 228 F.3d. at 1168-70; Western States Paving, 407 F.3d at 992.

[20] Adarand VII. at 1170-72.

[21] Id. at 1172-74.

[22] Id. at 1174-75.

### 2. The Narrow Tailoring Requirement

The second prong of the strict scrutiny analysis requires the implementation of the Federal DBE Program by recipients of federal funds be "narrowly tailored" to remedy identified discrimination in the particular recipient's contracting and procurement market.[23] The narrow tailoring requirement has several components. First, according to Western States Paving, the recipient of federal funds must have independent evidence of discrimination within the recipient's own transportation contracting and procurement marketplace in order to determine whether or not there is the need for race-, ethnicity-, or gender-conscious remedial action.[24] Thus, the Ninth Circuit held in Western States Paving that mere compliance with the Federal DBE Program does not satisfy strict scrutiny.[25]

Second, in Western States Paving, the court found that even where evidence of discrimination is present in a recipient's market, a narrowly tailored program must apply only to those minority groups who have actually suffered discrimination. Thus, under a race- or ethnicity -conscious program, for each of the minority groups to be included in any race- or ethnicity-conscious elements in a recipient's implementation of the Federal DBE Program, there must be evidence that the minority group suffered discrimination within the recipient's marketplace.

To satisfy the narrowly tailored prong of the strict scrutiny analysis in the context of the Federal DBE Program, the federal courts, which evaluated state DOT DBE Programs and their implementation of the Federal DBE Program, have held the following factors are pertinent:

- Evidence of discrimination or its effects in the state transportation contracting industry;
- Flexibility and duration of a race- or ethnicity-conscious remedy;
- Relationship of any numerical DBE goals to the relevant market;
- Effectiveness of alternative race- and ethnicity-neutral remedies;
- Impact of a race- or ethnicity-conscious remedy on third parties; and
- Application of any race- or ethnicity-conscious program to only those minority groups who have actually suffered discrimination.[26]

---

[23] Western States Paving, 407 F3d at 995-998; Sherbrooke Turf, 345 F.3d at 970-71.

[24] Western States Paving, 407 F.3d at 997-98, 1002-03.

[25] Id. at 995-1003. It should be pointed out that in the Northern Contracting decision (7th Cir. 2007), the Seventh Circuit Court of Appeals cited its earlier precedent in Milwaukee County Pavers v. Fielder to hold "that a state is insulated from [a narrow tailoring] constitutional attack, absent a showing that the state exceeded its federal authority. IDOT here is acting as an instrument of federal policy and Northern Contracting (NCI) cannot collaterally attack the federal regulations through a challenge to IDOT's program." 473 F.3d at 722. The Seventh Circuit Court of Appeals distinguished both the Ninth Circuit Court of Appeals decision in Western States Paving and the Eighth Circuit Court of Appeals decision in Sherbrooke Turf, relating to an as-applied narrow tailoring analysis. The Seventh Circuit Court of Appeals stated in a footnote that the court in Western States Paving "misread" the decision in Milwaukee County Pavers. Id. at 722, n.5. The Seventh Circuit Court of Appeals held instead that IDOT's application of a federally mandated program is limited to the question of whether the state exceeded its grant of federal authority under the Federal DBE Program. Id. at 722. The Seventh Circuit Court of Appeals analyzed IDOT's compliance with the federal regulations regarding calculation of the availability of DBEs, adjustment of its goal based on local market conditions and its use of race-neutral methods set forth in the federal regulations. Id. at 723-24. The court held NCI failed to demonstrate that IDOT did not satisfy compliance with the federal regulations (49 C.F.R. Part 26). Id. Accordingly, the Seventh Circuit Court of Appeals affirmed the district court's decision upholding the validity of IDOT's DBE program. See the discussion of the Northern Contracting decision below in Section IV.B.1.

[26] See, e.g., Rothe, 545 F.3d at 1036; Western States Paving, 407 F.3d at 998; Sherbrooke Turf, 345 F.3d at 971; Adarand VII, 228 F.3d at 1181.

As discussed above, if a recipient of federal funds through the Federal DBE Program lacks sufficient evidence of discrimination or its effects, then it should conduct a study in order to comply with the requirements of the Federal DBE Program, and to determine whether there is evidence of discrimination or its effects in the recipient's market.[27] Both statistical and anecdotal evidence are relevant in this assessment.[28]

**Burden of proof.** Under the strict scrutiny analysis, and to the extent a recipient of Federal financial assistance has implemented a race-, ethnicity-, and gender-conscious program, the recipient has the initial burden of showing a "strong basis in evidence" (both statistical and anecdotal evidence) to support its remedial action.[29] If the government makes its initial showing, the burden shifts to the challenger to rebut that showing.[30] However, the challenger bears the ultimate burden of showing that the recipient's evidence "did not support an inference of discrimination."[31]

**Statistical evidence.** Statistical evidence of discrimination is a primary method used to determine whether or not a strong basis in evidence exists to develop, adopt and support a remedial program (i.e. to prove a compelling governmental interest, or in the case of a recipient complying with the Federal DBE Program, to prove narrow tailoring of program implementation at the state or local recipient level).[32]

One form of statistical evidence is the comparison of a government's utilization of minority contractors compared to the relative availability of qualified, willing and able minority contractors. It has been held that a precipitous drop in DBE participation when no race- or ethnicity-conscious methods are used may support a conclusion that a substantial portion of a recipient's DBE goal cannot be met with race- or ethnicity-neutral measures.[33]

Other considerations regarding statistical evidence include:

- **Availability analysis.** A disparity index requires an availability analysis. DBE, MBE, and WBE availability measures the relative number of DBEs, MBEs, and WBEs among all firms ready, willing and able to perform a certain type of work within a particular geographic market area.[34] There is authority that measures of availability may be approached with different levels of specificity and the practicality of various approaches must be considered.[35] "An analysis is not devoid of probative value simply because it may theoretically be possible to adopt a more refined approach."[36]

---

[27] USDOT Guidance, supra note 6; FTA Notice for DBEs; Western States Guidance for Public Transportation Providers, 71 Fed. Reg. 48579-48580 (August 21, 2006); 49 C.F.R. § 26.45; Western States Paving, 407 F.3d at 1002-03.

[28] Western States Pavi*ng,* 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

[29] See Rothe Development Corp. v. Department of Defense, 545 F.3d 1023, 1036 (Fed. Cir. 2008); N. Contracting, 473 F.3d at 721; Western States Paving, 407 F.3d at 991; Sherbrooke Turf, 345 F.3d at 969; Adarand VII, 228 F.3d at 1166.

[30] Adarand VII, 228 F.3d at 1166.

[31] Id.; see also Sherbrooke Turf, 345 F.3d at 971; Eng'g Contractors Ass'n of S. Fla. Inc. v. Metro. Dade County, 122 F.3d 895, 916 (11th Cir. 1997); N. Contracting, 473 F.3d at 721.

[32] See, e.g., Croson, 488 U.S. at 509; N. Contracting, 473 F.3d at 718-19, 723-24; Western States Paving, 407 F.3d at 991; Adarand VII, 228 F.3d at 1166.

[33] Sherbrooke Turf, 345 F. 3d at 973; see N. Contracting, 473 F.3d at 717-720.

[34] See, e.g., Croson, 448 U.S. at 509; 49 C.F.R. § 26.35; Rothe, 545 F.3d at 1041-1042; N. Contracting, 473 F.3d at 718, 722-23; Western States Paving, 407 F.3d at 995.

[35] Contractors Ass'n of Easton Pennsylvania, Inc. v. City of Philadelphia, 91 F.3d 586, 603 (3d Cir. 1996) ("CAEP II").

[36] Id.

- **Utilization analysis.** Courts have accepted measuring utilization based on the proportion of an government entity's contract dollars going to DBEs.[37]

- **Disparity index.** A disparity index may be utilized to determine whether or not there is a significant statistical disparity.[38] A disparity index is defined as the ratio of the percentage utilization to the percentage availability times 100. A disparity index below 80 has been accepted as evidence of adverse impact. This has been referred to as "The Rule of Thumb" or "The 80 percent Rule."[39]

- **Significant statistical disparity.** The federal courts have held that a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors may raise an inference of discriminatory exclusion.[40] However, a small statistical disparity, standing alone, may be insufficient to establish discrimination.[41]

- **Two standard deviation test.** The standard deviation figure describes the probability that the measured disparity is the result of mere chance. In some instances, statistical disparity that corresponds to a standard deviation of less than two is not considered to be statistically significant evidence of discrimination.[42]

**Anecdotal evidence.** Anecdotal evidence includes personal accounts of incidents, including of discrimination, told from the witness' perspective. In Western States Paving, the Ninth Circuit Court of Appeals found the absence of anecdotal evidence problematic.[43]

Personal accounts of actual discrimination may complement empirical evidence and play an important role in bolstering statistical evidence.[44] Anecdotal evidence of discrimination, standing alone, generally is insufficient to show a systematic pattern of discrimination.[45] Examples of anecdotal evidence may include:

- Testimony of DBE owners regarding whether they face difficulties or barriers;

- Descriptions of instances in which DBE owners believe they were treated unfairly or were discriminated against based on their race, ethnicity, or gender;

---

[37] See N. Contracting, 473 F.3d at 717-720; Sherbrooke Turf, 345 F. 3d at 973.

[38] Eng'g Contractors Ass'n, 122 F.3d at 914; W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206, 218 (5th Cir. 1999); Contractors Ass'n of Easton Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990, 1005 (3d Cir. 1993).

[39] See, e.g., Rothe, 545 F.3d at 1041; Eng'g Contractors Ass'n, 122 F.3d at 914, 923; Concrete Works of Colo., Inc. v. City and County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994).

[40] Croson, 488 U.S. at 509; Rothe, 545 F.3d at 1041; Concrete Works, 321 F.3d at 970; see Western States Paving, 407 F.3d at 1001.

[41] Western States Paving, 407 F.3d at 1001.

[42] Eng'g Contractors Ass'n, 122 F.3d at 914, 917, 923; The Compelling Interest, 61 Fed. Reg. at 26047, n.19.

[43] Western States Paving, 407 F.3d at 1001.

[44] See, e.g., Eng'g Contractors Ass'n, 122 F.3d at 925-26; Concrete Works, 36 F.3d at 1520; Contractors Ass'n, 6 F.3d at 1003; Coral Constr. Co. v. King County, 941 F.2d 910, 919 (9th Cir. 1991).

[45] Eng'g Contractors Ass'n, 122 F.3d at 924-25.

- Statements regarding whether firms solicit, or fail to solicit, bids or price quotes from DBEs on non-DBE goal projects; and

- Statements regarding whether there are instances of discrimination in bidding on specific contracts and in the financing and insurance markets.[46]

Courts have accepted and recognize that anecdotal evidence is the witness' narrative of incidents told from his or her perspective, including the witness' thoughts, feelings, and perceptions, and thus need not be verified.[47]

**Race-, ethnicity-, and gender-neutral measures.** To the extent a "strong basis in evidence" exists concerning discrimination in a recipient's particular transportation contracting industry, the courts analyze several criteria or factors to determine whether a recipient's implementation of the Federal DBE Program is narrowly tailored. One of the key factors is consideration of race-, ethnicity-, and gender-neutral measures.

The federal regulations and the courts require that recipients of Federal financial assistance governed by 49 CFR Part 26 implement or seriously consider race-, ethnicity-, and gender-neutral remedies prior to the implementation of race-, ethnicity-, and gender-conscious remedies.[48] The Ninth Circuit in Western States Paving also found "the regulations require a state to 'meet the maximum feasible portion of [its] overall goal by using race neutral means.'"[49]

A recipient of federal funds must give "serious, good faith consideration of workable race-neutral alternatives" prior to implementing a race-conscious program. Examples of race-, ethnicity-, and gender-neutral alternatives include, but are not limited to, the following:

- Providing assistance in overcoming bonding and financing obstacles;

- Relaxation of bonding requirements;

- Providing technical, managerial and financial assistance;

- Establishing programs to assist start-up firms;

---

[46] See, e.g., Concrete Works, 321 F.3d at 989; Adarand VII, 228 F.3d at 1166-76; The Compelling Interest, 61 Fed. Reg. at 26058-62.

[47] See, e.g., Concrete Works, 321 F.3d at 989; Eng'g Contractors Ass'n, 122 F.3d at 924-26; Cone Corp. v. Hillsborough County, 908 F.2d 908, 915 (11th Cir. 1990); Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 at *21, N. 32 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007).

[48] 49 C.F.R. § 26.51(a) requires recipients of federal funds to "meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation." See, e.g., Adarand VII, 228 F.3d at 1179; Western States Paving, 407 F.3d at 993; Sherbrooke Turf, 345 F.3d at 972. Additionally, in September of 2005, the United States Commission on Civil Rights (the "Commission") issued its report entitled "Federal Procurement After Adarand" setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at http://www.usccr.gov. The Commission found that ten years after the Court's Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral measures that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail "to engage in the basic activities that are the hallmarks of serious consideration," including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review. See discussion of USCCR Report at Section V.C. below.

[49] 407 F.3d at 993 (citing 49 C.F.R. § 26.51(a)).

- Simplification of bidding procedures;
- Training and financial aid for all disadvantaged entrepreneurs;
- Non-discrimination provisions in contracts and in state law;
- Mentor-protégé programs and mentoring;
- Efforts to address prompt payments to smaller businesses;
- Small contract solicitations to make contracts more accessible to smaller businesses;
- Expansion of advertisement of business opportunities;
- Outreach programs and efforts;
- "How to do business" seminars;
- Sponsoring networking sessions throughout the state to acquaint small firms with large firms;
- Creation and distribution of DBE directories; and
- Streamlining and improving the accessibility of contracts to increase small business participation.[50]

49 C.F.R. § 26.51(b) provides examples of race-, ethnicity-, and gender-neutral measures that the Consortium should seriously consider and utilize. The Ninth Circuit Court of Appeals in Western States Paving held that while the narrow tailoring analysis does not require a governmental entity to exhaust every possible race-, ethnicity-, and gender-neutral alternative, it does "require serious, good faith consideration of workable race-neutral alternatives."[51]

This requirement was reiterated recently by the Supreme Court in Parents Involved in Community Schools v. Seattle School District.[52] The majority opinion stated: "Narrow tailoring requires 'serious, good faith consideration of workable race-neutral alternatives,' and yet in Seattle several alternative assignment plans – many of which would not have used express racial classifications – were rejected with little or no consideration."[53] The court found that the District failed to show it seriously considered race-neutral measures.

---

[50] See 49 C.F.R. § 26.51(b); see, e.g., Croson, 488 U.S. at 509-510; N. Contracting, 473 F.3d at 724; Adarand VII, 228 F.3d 1179.

[51] Western States Paving, 407 F.3d at 993.

[52] 127 S.Ct. 2738, 2760-61 (2007).

[53] Id. at 2743, 2760-61. The court cited to the concurring opinion of Justice Kennedy in Croson that racial classifications should be used as a "last resort." Id. at 2760-61; see also id. at 2792 (Kennedy, J., concurring in part and concurring in judgment, citing his concurring opinion in Croson, at 519, 109 S.Ct. 706) (stating that racial classifications "may be considered legitimate only if they are a last resort to achieve a compelling interest"); Grutter v. Bollinger, 539 U.S. 306, 339 (2003).

The Eleventh Circuit in Engineering Contractors Association described the "the essence of the 'narrowly tailored' inquiry [as] the notion that explicitly racial preferences … must only be a 'last resort' option."[54] The Sixth Circuit Court of Appeals in Associated Gen. Contractors v. Drabik ("Drabik II"), stated that "Adarand teaches that a court called upon to address the question of narrow tailoring must ask, "for example, whether there was 'any consideration of the use of race-neutral means to increase minority business participation' in government contracting…"

The "narrowly tailored" analysis is instructive for the Consortium in terms of developing their DBE Programs and implementing the Federal DBE Program.

## B. Intermediate Scrutiny Analysis

The Ninth Circuit Court of Appeals and other Federal Circuit Courts of Appeal apply intermediate scrutiny to gender-conscious programs.[55] The Ninth Circuit has interpreted this standard to require that gender-based classifications be:

1. Supported by both an exceedingly persuasive justification; and

2. Substantially related to the achievement of that underlying objective.

This standard as interpreted by the Ninth Circuit has been characterized as falling somewhere between intermediate and strict scrutiny.

Under the traditional intermediate scrutiny standard, the court reviews a gender-conscious program by analyzing whether the recipient of federal funds has established a sufficient factual predicate for the claim that female-owned businesses have suffered discrimination, and whether the gender-conscious remedy is an appropriate response to such discrimination. This standard requires the recipient of federal funds to present probative evidence in support of its stated rationale for the program.[56]

Intermediate scrutiny, as interpreted by the Ninth Circuit and other Federal Circuit Courts of Appeal, requires a direct, substantial relationship between the objective of the gender preference and the means chosen to accomplish the objective. The measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny. Unlike strict scrutiny, the intermediate scrutiny standard does not require any showing of government involvement, active or passive, in the discrimination it seeks to remedy.[57]

---

[54] Eng'g Contractors Ass'n, 122 F.3d at 926 (internal citations omitted).

[55] See generally, Western States Paving, 407 F.3d at 990 n.6; Coral Constr. Co., 941 F.2d at 931; Equal. Found. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Eng'g Contractors Ass'n, 122 F.3d at 908; Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994).

[56] Coral Constr. Co., 941 F.2d at 931-32.

[57] Id.

## C. Proposition 209 and the Federal Program Exception

Proposition 209 was passed by California voters in 1996 and became effective on August 28, 1997.[58] Proposition 209 amended the state constitution to prohibit discrimination and the use of race or gender preferences in public contracting, public employment and public education, unless required by federal law. Proposition 209 survived several years of legal challenges in both the state and federal courts. In 2000, the California Supreme Court found that a City of San Jose MWBE Program violated Proposition 209.[59] The court held that the use of participation components (MBE/WBE goals) and outreach components targeted to MBE/WBEs triggered strict scrutiny and were in violation of Proposition 209.[60] The court also held certain outreach components that are not race, ethnicity, or gender based could be valid.[61]

In Connerly v. State Personnel Board, the Governor of California and a taxpayer challenged the constitutionality of MBE/WBE and affirmative action type programs.[62] The California Court of Appeals found that Proposition 209 overlaps with the principles of equal protection, however, "[t]o the extent the federal Constitution would permit, but not require, the state to grant preferential treatment to suspect classes, Proposition 209 precludes such action."[63] The court held the affirmative action type programs were invalid under Proposition 209. The court also determined that targeted outreach programs to women and minorities violated Proposition 209. But the court found that certain outreach programs "designed to broaden the pool of potential applicants without reliance on an impermissible race or gender classification are not constitutionally forbidden."[64] The court also held as valid certain limited monitoring and reporting requirements, including as to the level of MBE/WBE participation.[65]

Proposition 209 expressly provides that: "[N]othing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State." California Constitution, Article I, §31(e). In C&C Construction v. Sacramento Municipal Utility District ("SMUD"), the plaintiff argued that SMUD's race-based DBE program violated Proposition 209.[66] SMUD argued its program fell within the meaning of the federal program exception in Section 31(e).[67] The court disagreed with SMUD that its race-based program was necessary to maintain federal funding, finding SMUD failed to establish any evidence that a federal program required such a race-based program, or that SMUD would lose federal funding if it did not have a race-based program.[68] The Court of

---

[58] California Constitution, Article 1, Section 31.

[59] Hi-Voltage Wire Works v. City of San Jose, 12 P.3d 1068 (Cal. 2000).

[60] Id.

[61] Id.

[62] Connerly v. State Personnel Board , 92 Cal. App. 4th 16, 39 (2001).

[63] Id. at 42.

[64] Id. at 46.

[65] Id. at 53, 63.

[66] C&C Construction v. Sacramento Municipal Utility District ("SMUD"), 122 Cal. App. 4th 284 (3d Dist. C.A. 2004).

[67] Id. at 291.

[68] Id. at 310. It is noteworthy that prior to Proposition 209, a similar argument was made that an injunction prohibiting the implementation by Los Angeles Metro of its DBE Program would subject Los Angeles Metro to a loss of federal funding. Cornelius v. L.A. County Metro. Transp. Auth., 49 Cal App. 4th 1761, 1769 (1996) (holding that plaintiff satisfied the first element via his claim that the DBE Program violated the equal protection of the law but holding that plaintiff lacked standing).

Appeals held that a government entity must have substantial evidence that it will lose federal funding if it does not use race-based remedial measures, and any such race-based remedial measures must be narrowly tailored to minimize race-based discrimination.[69] The court referenced the USDOT regulations in 49 C.F.R. § 21.5(b)(7), as an example of a federal funds program, and stated these regulations require recipients of federal funds to establish programs to remedy past discrimination, but that these programs may be either race-based or race-neutral.[70] The court held that SMUD did not prove that it could not remedy past identified discrimination with race-neutral measures, and thus rejected SMUD's argument that it met the federal program exception to Proposition 209.[71]

In Coral Construction v. City and County of San Francisco, the California Court of Appeals recently affirmed the trial court's ruling that the City and County MBE/WBE-type ordinance was invalid, but remanded the case to the trial court to rule on the issue of whether the ordinance was mandated by the federal Constitution as a narrowly tailored remedial program to remedy discrimination in public contracting.[72] Coral Construction petitioned the California Supreme Court for a review of the Court of Appeals' decision to remand on this issue. The City and County answered the petition and requested the court review two additional decision by the Court of Appeals. The California Supreme Court granted the petition, and the case is now pending before California Supreme Court. The issues to be reviewed by the Supreme Court include: (1) Did the Court of Appeals properly remand the case to the trial court to determine in the first instance whether the ordinance was required by the Federal Equal Protection Clause as a narrowly tailored remedial program to remedy ongoing, pervasive discrimination in public contracting; (2) Does an ordinance that provides certain advantages to minority- and female-owned business enterprises with respect to the award of city contracts fall within an exception to Section 31 (Proposition 209) for actions required of a local governmental entity to maintain eligibility for federal funds under the Federal Civil Rights Act; and (3) Does Section 31, of the California Constitution, which prohibits government entities from discrimination or preference on the basis of race, sex, or color in public contracting, improperly disadvantage minority groups and violate equal protection principles by making it more difficult to enact legislation on their behalf?

**Ongoing review.** The above represents a summary of the legal framework pertinent to implementation of the Federal DBE program. Because this is a dynamic area of the law, this framework is subject to ongoing review as the law continues to evolve.

[69] Id. at 298.

[70] Id.

[71] Id.

[72] Coral Const. Co., 149 Cal. App. 4th 1218, 57 Cal. Rptr. 3d 781 (2007), review granted, 167 P.3d 25, 65 Cal. Rptr.3d 761 (2007). Pursuant to California Court Rule 8.1105(e), an opinion is no longer considered published if the California Supreme Court grants review.

# IV. Recent Decisions Involving the Federal DBE Program and Recipients of Federal Funds That Impact the Consortium Agencies' DBE Programs

## A. Recent Decisions in the Ninth Circuit

### 1. Western States Paving Co. v. Washington State DOT, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006)

This case is binding on the Consortium's continued implementation of the Federal DBE Program. In Western States, the Ninth Circuit Court of Appeals held that the State of Washington's implementation of the Federal DBE Program was unconstitutional because it did not satisfy the narrow tailoring element of the constitutional test. The Ninth Circuit held that the State must present its own evidence of past discrimination within its own boundaries in order to survive constitutional muster and could not merely rely upon data supplied by Congress. The United States Supreme Court recently denied certiorari. The analysis in the decision also is instructive in particular as to the application of the narrowly tailored prong of the strict scrutiny test.

Plaintiff Western States Paving Co. was a white male-owned asphalt and paving company. 407 F.3d 983, 987 (9th Cir. 2005). In July of 2000, plaintiff submitted a bid for a project for the City of Vancouver; the project was financed with federal funds provided to the Washington State DOT ("WSDOT") under the Transportation Act for the 21st Century ("TEA-21"). Id.

Congress enacted TEA-21 in 1991 and after multiple renewals, it was set to expire on May 31, 2004. Id. at 988. TEA-21 established minimum minority-owned business participation requirements (10%) for certain federally-funded projects. Id. The regulations require each state accepting federal transportation funds to implement a DBE program that comports with the TEA-21. Id. TEA-21 indicates the 10 percent DBE utilization requirement is "aspirational," and the statutory goal "does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent." Id.

TEA-21 sets forth a two-step process for a state to determine its own DBE utilization goal: (1) the state must calculate the relative availability of DBEs in its local transportation contracting industry (one way to do this is to divide the number of ready, willing and able DBEs in a state by the total number of ready, willing and able firms); and (2) the state is required to "adjust this base figure upward or downward to reflect the proven capacity of DBEs to perform work (as measured by the volume of work allocated to DBEs in recent years) and evidence of discrimination against DBEs obtained from statistical disparity studies." Id. at 989 (citing regulation). A state is also permitted to consider discrimination in the bonding and financing industries and the present effects of past discrimination. Id. (citing regulation). TEA-21 requires a generalized, "undifferentiated" minority goal and a state is prohibited from apportioning its DBE utilization goal among different minority groups (e.g. between Hispanics, blacks, and women). Id. at 990 (citing regulation).

"A state must meet the maximum feasible portion of this goal through race- [and gender-] neutral means, including informational and instructional programs targeted toward all small businesses." Id. (citing regulation). Race- and sex-conscious contract goals must be used to achieve any portion of the contract goals not achievable through race- and gender-neutral measures. Id. (citing regulation).

However, TEA-21 does not require that DBE participation goals be used on every contract or at the same level on every contract in which they are used; rather, the overall effect must be to "obtain that portion of the requisite DBE participation that cannot be achieved through race- [and gender-] neutral means." Id. (citing regulation).

A prime contractor must use "good faith efforts" to satisfy a contract's DBE utilization goal. Id. (citing regulation). However, a state is prohibited from enacting rigid quotas that do not contemplate such good faith efforts. Id. (citing regulation).

Under the TEA-21 minority utilization requirements, the City set a goal of 14 percent minority participation on the first project plaintiff bid on; the prime contractor thus rejected plaintiff's bid in favor of a higher bidding minority-owned subcontracting firm. Id. at 987. In September of 2000, plaintiff again submitted a bid on project financed with TEA-21 funds and was again rejected in favor of a higher bidding minority-owned subcontracting firm. Id. The prime contractor expressly stated that he rejected plaintiff's bid due to the minority utilization requirement. Id.

Plaintiff filed suit against the WSDOT, Clark County, and the City, challenging the minority preference requirements of TEA-21 as unconstitutional both facially and as applied. Id. The district court rejected both of plaintiff's challenges. The district court held the program was facially constitutional because it found that Congress had identified significant evidence of discrimination in the transportation contracting industry and the TEA-21 was narrowly tailored to remedy such discrimination. Id. at 988. The district court rejected the as-applied challenge concluding that Washington's implementation of the program comported with the federal requirements and the state was not required to demonstrate that its minority preference program independently satisfied strict scrutiny. Id. Plaintiff appealed to the Ninth Circuit Court of Appeals. Id.

The Ninth Circuit considered whether the TEA-21, which authorizes the use of race- and gender-based preferences in federally-funded transportation contracts, violated equal protection, either on its face or as applied by the State of Washington.

The court applied a strict scrutiny analysis to both the facial and as-applied challenges to TEA-21. Id. at 990-91. The court did not apply a separate intermediate scrutiny analysis to the gender-based classifications because it determined that it "would not yield a different result." Id. at 990, n. 6.

**Facial challenge (Federal Government).** The court first noted that the federal government has a compelling interest in "ensuring that its funding is not distributed in a manner that perpetuates the effects of either public or private discrimination within the transportation contracting industry." Id. at 991, citing Croson, 488 U.S. at 492 and Adarand VII, 228 F.3d at 1176. The court found that "[b]oth statistical and anecdotal evidence are relevant in identifying the existence of discrimination." Id. at 991. The court found that although Congress did not have evidence of discrimination against minorities in every state, such evidence was unnecessary for the enactment of nationwide legislation. Id. However, citing both the Eighth and Tenth Circuits, the court found that Congress had ample evidence of discrimination in the transportation contracting industry to justify TEA-21. Id. The court also found that because TEA-21 set forth flexible race-conscious measures to be used only when race-neutral efforts were unsuccessful, the program was narrowly tailored and thus satisfied strict scrutiny. Id. at 992-93. The court accordingly rejected plaintiff's facial challenge. Id.

**As-applied challenge (State of Washington).** Plaintiff alleged TEA-21 was unconstitutional as-applied because there was no evidence of discrimination in Washington's transportation contracting industry. Id. at 995. The State alleged that it was not required to independently demonstrate that its application of TEA-21 satisfied strict scrutiny. Id. The United States intervened to defend TEA-21's facial constitutionality, and "unambiguously conceded that TEA-21's race conscious measures can be constitutionally applied only in those states where the effects of discrimination are present." Id. at 996; see also Br. for the United States at 28 (April 19, 2004) ("DOT's regulations … are designed to assist States in ensuring that race-conscious remedies are limited to *only* those jurisdictions where discrimination or its effects are a problem and *only* as a last resort when race-neutral relief is insufficient." (emphasis in original)).

The court found that the Eighth Circuit Court of Appeals was the only other court to consider an as-applied challenge to TEA-21 in Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964 (8th Cir. 2003), cert. denied 124 S. Ct. 2158 (2004). Id. at 996. The Eighth Circuit did not require Minnesota and Nebraska to identify a compelling purpose for their programs independent of Congress's nationwide remedial objective. Id. However, the Eighth Circuit did consider whether the states' implementation of TEA-21 was narrowly tailored to achieve Congress's remedial objective. Id. The Eighth Circuit thus looked to the states' independent evidence of discrimination because "to be narrowly tailored, a *national* program must be limited to those parts of the country where its race-based measures are demonstrably needed." Id. (internal citations omitted). The Eighth Circuit relied on the states' statistical analyses of the availability and capacity of DBEs in their local markets conducted by outside consulting firms to conclude that the states satisfied the narrow tailoring requirement. Id. at 997.

The court concurred with the Eighth Circuit Court of Appeals and found that Washington did not need to demonstrate a compelling interest for its DBE program, independent from the compelling nationwide interest identified by Congress. Id. However, the court determined that the district court erred in holding that mere compliance with the federal program satisfied strict scrutiny. Id. Rather, the court held that whether Washington's DBE program was narrowly tailored was dependent on the presence or absence of discrimination in Washington's transportation contracting industry. Id. at 997-98. "If no such discrimination is present in Washington, then the State's DBE program does not serve a remedial purpose; it instead provides an unconstitutional windfall to minority contractors solely on the basis of their race or sex." Id. at 998. The court held that a Sixth Circuit Court of Appeals decision to the contrary, Tennessee Asphalt Co. v. Farris, 942 F.2d 969, 970 (6th Cir. 1991), misinterpreted earlier case law. Id. at 997, n.9.

The court found that moreover, even where discrimination is present in a state, a program is narrowly tailored only if it applies only to those minority groups who have actually suffered discrimination. Id. at 998, citing Croson, 488 U.S. at 478. The court also found that in Monterey Mechanical Co. v. Wilson, 125 F.3d 702, 713 (9th Cir. 1997), it had "previously expressed similar concerns about the haphazard inclusion of minority groups in affirmative action programs ostensibly designed to remedy the effects of discrimination." Id. In Monterey Mechanical, the Ninth Circuit Court of Appeals held that "the overly inclusive designation of benefited minority groups was a 'red flag signaling that the statute is not, as the Equal Protection Clause requires, narrowly tailored.'" Id., citing Monterey Mechanical, 125 F.3d at 714. The court found that other courts are in accord. Id. at 998-99, citing Builder's Ass'n of Greater Chi. v. County of Cook, 256 F.3d 642, 647 (7th Cir. 2001); Associated Gen. Contractors of Ohio, Inc. v. Drabik, 214 F.3d 730, 737 (6th Cir. 2000);

O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992). Accordingly, the court found that each of the principal minority groups benefited by Washington's DBE program must have suffered discrimination within the State. Id. at 999.

The court found that Washington's program closely tracked the sample USDOT DBE program. Id. WSDOT calculated its DBE participation goal by first calculating the availability of ready, willing and able DBEs in the State (dividing the number of transportation contracting firms in the Washington State Office of Minority, Women and Disadvantaged Business Enterprises Directory, by the total number of transportation contracting firms listed in the Census Bureau's Washington database, which equaled 11.17%). Id. WSDOT then upwardly adjusted the 11.17 percent base figure to 14 percent "to account for the proven capacity of DBEs to perform work, as reflected by the volume of work performed by DBEs [during a certain time period]." Id. Although DBE's performed 18 percent of work on State projects during the prescribed time period, Washington set the final adjusted figure at 14 percent because TEA-21 reduced the number of eligible DBEs in Washington by imposing more stringent certification requirements. Id. at 999, n.11. WSDOT did not make an adjustment to account for discriminatory barriers in obtaining bonding and financing. Id. WSDOT similarly did not make any adjustment to reflect present or past discrimination "because it lacked any statistical studies evidencing such discrimination." Id.

WSDOT then determined that it needed to achieve 5 percentage points of its 14 percent goal through race-conscious means based on a 9 percent DBE participation rate on state-funded contracts that did not include affirmative action components (i.e. 9 percentage points of the participation could be achieved through race-neutral means). Id. at 1000. The USDOT approved WSDOT goal-setting program and the totality of its 2000 DBE program. Id.

Washington conceded that it did not have statistical studies to establish the existence of past or present discrimination. Id. It argued, however, that it had evidence of discrimination because minority-owned firms had the capacity to perform 14 percent of the State's transportation contracts in 2000 but received only 9 percent of the subcontracting funds on contracts that did not include an affirmative actions component. Id. The court found that the State's methodology was flawed because the 14 percent figure was based on the earlier 18 percent figure, discussed supra, which included contracts with affirmative action components. Id. The court concluded that the 14 percent figure did not accurately reflect the performance capacity of DBEs in a race-neutral market. Id. The court also found the State conceded as much to the district court. Id.

The court held that a disparity between DBE performance on contracts with an affirmative action component and those without "does not provide any evidence of discrimination against DBEs." Id. The court found that the only evidence upon which Washington could rely was the disparity between the proportion of DBE firms in the State (11.17%) and the percentage of contracts awarded to DBEs on race-neutral grounds (9%). Id. However, the court determined that such evidence was entitled to "little weight" because it did not take into account a multitude of other factors such as firm size. Id.

Moreover, the court found that the minimal statistical evidence was insufficient evidence, standing alone, of discrimination in the transportation contracting industry. Id. at 1001. The court found that WSDOT did not present any anecdotal evidence. Id. The court rejected the State's argument that the DBE applications themselves constituted evidence of past discrimination because the applications were not properly in the record, and because the applicants were not required to certify that they had

been victims of discrimination in the contracting industry. Id. Accordingly, the court held that because the State failed to proffer evidence of discrimination within its own transportation contracting market, its DBE program was not narrowly tailored to Congress's compelling remedial interest. Id. at 1002-03.

The court affirmed the district court's grant on summary judgment to the United States regarding the facial constitutionality of TEA-21, reversed the grant of summary judgment to Washington on the as-applied challenge, and remanded to determine the State's liability for damages.

The dissent argued that where the State complied with TEA-21 in implementing its DBE program, it was not susceptible to an as-applied challenge.

### 1A. Western States Paving Co. v. Washington DOT, US DOT and FHWA, 2006 WL 1734163 (W.D. Wash. June 23, 2006)

This case was before the district court pursuant to the Ninth Circuit's remand order in Western States Paving Co. Washington DOT, US DOT, and FHWA, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006). In this decision, the district court adjudicated cross motions for summary judgment on plaintiff's claim for injunction and for damages under 42 U.S.C. §§1981, 1983, and §2000d.

Because the WSDOT voluntarily discontinued its DBE program after the Ninth Circuit Court of Appeals decision, supra, the district court dismissed plaintiff's claim for injunctive relief as moot. The court found "it is absolutely clear in this case that WSDOT will not resume or continue the activity the Ninth Circuit found unlawful in Western States," and cited specifically to the informational letters WSDOT sent to contractors informing them of the termination of the program.

Second, the court dismissed plaintiff's claims under 42 U.S.C. §§ 1981, 1983, and 2000d against Clark County and the City of Vancouver holding neither the City or the County acted with the requisite discriminatory intent. The court held the County and the City were merely implementing the WSDOT's unlawful DBE program and their actions in this respect were involuntary and required no independent activity. The court also noted that the County and the City were not parties to the precise discriminatory actions at issue in the case, which occurred due to the conduct of the "State defendants." Specifically, the WSDOT – and not the County or the City – developed the DBE program without sufficient anecdotal and statistical and evidence, and improperly relied on the affidavits of contractors seeking DBE certification "who averred that they had been subject to 'general societal discrimination.'"

Third, the court dismissed plaintiff's 42 U.S.C. §§ 1981 and 1983 claims against WSDOT, finding them barred by the Eleventh Amendment sovereign immunity doctrine. However, the court allowed plaintiff's 42 U.S.C. §2000d claim to proceed against WSDOT because it was not similarly barred. The court held that Congress had conditioned the receipt of federal highway funds on compliance with Title VI (42 U.S.C. § 2000d et seq.) and the waiver of sovereign immunity from claims arising under Title VI. Section 2001 specifically provides that "a State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of … Title VI." The court held that this language put the WSDOT on notice that it faced private causes of action in the event of noncompliance.

The court held that WSDOT's DBE program was not narrowly tailored to serve a compelling government interest. The court stressed that discriminatory intent is an essential element of a plaintiff's claim under Title VI. The WSDOT argued that even if sovereign immunity did not bar plaintiff's §2000d claim, WSDOT could be held liable for damages because there was no evidence that WSDOT staff knew of or consciously considered plaintiff's race when calculating the annual utilization goal. The court held that since the policy was not "facially neutral" – and was in fact "specifically race conscious" – any resulting discrimination was therefore intentional, whether the reason for the classification was benign or its purpose remedial. As such, WSDOT's program was subject to strict scrutiny.

In order for the court to uphold the DBE program as constitutional, WSDOT had to show that the program served a compelling interest and was narrowly tailored to achieve that goal. The court found that the Ninth Circuit Court of Appeals had already concluded that the program was not narrowly tailored and the record was devoid of any evidence suggesting that minorities currently suffer or have suffered discrimination in the Washington transportation contracting industry. The court therefore denied WSDOT's motion for summary judgment on the §2000d claim. The remedy available to Plaintiff Western States remains for further adjudication and the case is currently pending.

## B. Recent Decisions in Other Circuits

There are several recent cases involving challenges to the United States Federal DBE Program and its implementation by states and other governmental entities for federally-funded projects. These cases could have a significant impact on the Federal DBE Program and its implementation by the Consortium, as well as potentially impacting the nature and provisions of the Consortium's contracting and procurement on federally-funded projects, including and relating to the utilization of DBEs. Additionally, these cases provide an instructive analysis of the recent application of the strict scrutiny test to DBE-type programs. These decisions that are from Federal Courts of Appeal other than the Ninth Circuit Court of Appeals are not legally controlling or binding authority on the Consortium's implementation of the Federal DBE Program, but they are instructive for the Study and may be considered as having persuasive effect.

### 1. Northern Contracting, Inc. v. Illinois, 473 F.3d 715 (7th Cir. 2007)

In Northern Contracting, Inc. v. Illinois, the Seventh Circuit affirmed the district court decision upholding the validity and constitutionality of the Illinois Department of Transportation's ("IDOT") DBE Program. Plaintiff Northern Contracting Inc. ("NCI") was a white male-owned construction company specializing in the construction of guardrails and fences for highway construction projects in Illinois. 473 F.3d 715, 717 (7th Cir. 2007). Initially, NCI challenged the constitutionality of both the federal regulations and the Illinois statute implementing these regulations. Id. at 719. The district court granted the USDOT's motion for summary judgment, concluding that the federal government had demonstrated a compelling interest and that TEA-21 was sufficiently narrowly tailored. NCI did not challenge this ruling and thereby forfeited the opportunity to challenge the federal regulations. Id. at 720. NCI also forfeited the argument that IDOT's DBE program did not serve a compelling government interest. Id. The sole issue on appeal to the Seventh Circuit was whether IDOT's program was narrowly tailored. Id.

IDOT typically adopted a new DBE plan each year. Id. at 718. In preparing for Fiscal Year 2005, IDOT retained a consulting firm to determine DBE availability. Id. The consultant first identified the relevant geographic market (Illinois) and the relevant product market (transportation infrastructure construction). Id. The consultant then looked at Dun & Bradstreet's Marketplace for minority- and woman-owned businesses and supplemented this survey with IDOT's list of DBEs in Illinois. Id. This initial list was corrected for errors in the data by surveying a random sample from the group which led the consultant to conclude that 22.8 percent of the firms listed were actually owned by white men. Id. The consultant then surveyed all the firms listed as not being minority or woman-owned. Id. This survey led the consultant to conclude that 14.5 percent were actually owned by minorities or women. Id. In light of these two surveys, the consultant arrived at a DBE availability of 22.77 percent. Id. The consultant then ran a regression analysis on earnings and business formation and concluded that, in the absence of discrimination, relative DBE availability would be 27.5 percent. Id. IDOT considered this, along with other data, including data of DBE utilization on IDOTs "zero goal" experiment conducted in 2002 to 2003 in which IDOT did not use DBE goals on 5 percent of its contracts (1.5% utilization) and data of DBE utilization on projects for the Illinois State Toll Highway Authority, which does not receive federal funding and whose goals are completely voluntary (1.6% utilization). Id. at 719. On the basis of all of these data, IDOT adopted a 22.77 percent goal for 2005. Id.

Despite the fact the NCI forfeited the argument that IDOT's DBE program did not serve a compelling state interest, the Seventh Circuit briefly addressed the compelling interest prong of the strict scrutiny analysis, noting that IDOT had satisfied its burden. Id. at 720. The court noted that, post-Adarand, two other circuits have held that a state may rely on the federal government's compelling interest in implementing a local DBE plan. Id. at 720-21, citing Western States Paving Co., Inc. v. Washington State DOT, 407 F.3d 983, 987 (9th Cir. 2005), cert. denied, 126 S.Ct. 1332 (Feb. 21, 2006) and Sherbrooke Turf, Inc. v. Minnesota DOT, 345 F.3d 964, 970 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004). The court stated that NCI had not articulated any reason to break ranks from the other circuits and explained that "[i]nsofar as the state is merely complying with federal law it is acting as the agent of the federal government …. If the state does exactly what the statute expects it to do, and the statute is conceded for purposes of litigation to be constitutional, we do not see how the state can be thought to have violated the Constitution." Id. at 721, quoting Milwaukee County Pavers Association v. Fielder, 922 F.2d 419, 423 (7th Cir. 1991). The court did not address whether IDOT had an independent interest that could have survived constitutional scrutiny.

In addressing the narrowly tailored prong with respect to IDOT's DBE program, the court held that IDOT had complied. Id. The court concluded its holding in Milwaukee that a state is insulated from a constitutional attack absent a showing that the state exceeded its federal authority remained applicable. Id. at 721-22. The court noted that the Supreme Court in Adarand Constructors v. Pena, 515 U.S. 200 (1995) did not seize the opportunity to overrule that decision, explaining that the court did not invalidate its conclusion that a challenge to a state's application of a federally mandated program must be limited to the question of whether the state exceeded its authority. Id. at 722.

The court further clarified the Milwaukee opinion in light of the interpretations of the opinions offered in by the Ninth Circuit in Western States and Eighth Circuit in Sherbrooke. Id. The court stated that the Ninth Circuit in Western States misread the Milwaukee decision in concluding that Milwaukee did not address the situation of an as-applied challenge to a DBE program. Id. at 722,

n.5. Relatedly, the court stated that the Eighth Circuit's opinion in Sherbrooke (that the Milwaukee decision was compromised by the fact that it was decided under the prior law "when the ten percent federal set-aside was more mandatory") was unconvincing since all recipients of federal transportation funds are still required to have compliant DBE programs. Id. at 722. Federal law makes more clear now that the compliance could be achieved even with no DBE utilization if that were the result of a good faith use of the process. Id. at 722, n.5. The court stated that IDOT in this case was acting as an instrument of federal policy and NCI's collateral attack on the federal regulations was impermissible. Id. at 722.

The remainder of the court's opinion addressed the question of whether IDOT exceeded its grant of authority under federal law, and held that all of NCI's arguments failed. Id. First, NCI challenged the method by which the local base figure was calculated, the first step in the goal-setting process. Id. NCI argued that the number of registered and prequalified DBEs in Illinois should have simply been counted. Id. The court stated that while the federal regulations list several examples of methods for determining the local base figure. Id. at 723. These examples are not intended as an exhaustive list. In fact, the fifth item in the list is entitled "Alternative Methods," and states: "You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designated to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market." Id. (citing 49 C.F.R. § 26.45(c)(5)). According to the court, the regulations make clear that "relative availability" means "the availability of ready, willing and able DBEs relative to all business ready, willing, and able to participate" on DOT contracts. Id. Importantly, the court stated NCI pointed to nothing in the federal regulations that indicated that a recipient must so narrowly define the scope of the ready, willing, and available firms to a simple count of the number of registered and prequalifed DBEs. Id. The court agreed with the district court that the remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net. Id.

Second, NCI argued that the IDOT failed to properly adjust its goal based on local market conditions. Id. The court noted that the federal regulations do not require any adjustments to the base figure, but simply provide recipients with authority to make such adjustments if necessary. Id. According to the court, NCI failed to identify any aspect of the regulations requiring IDOT to separate prime contractor availability from subcontractor availability, and pointed out that the regulations require the local goal to be focused on overall DBE participation. Id.

Third, NCI contended that IDOT violated the federal regulations by failing to meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. Id. at 723-24. NCI argued that IDOT should have considered DBEs who had won subcontracts on goal projects where the prime contractor did not consider DBE status, instead of only considering DBEs who won contracts on no-goal projects. Id. at 724. The court held that while the regulations indicate that where DBEs win subcontracts on goal projects strictly through low bid this can be counted as race-neutral participation, the regulations did not require IDOT to search for this data for the purpose of calculating past levels of race-neutral DBE participation. Id. According to the court, the record indicated that IDOT used nearly all the methods described in the regulations to maximize the portion of the goal that will be achieved through race-neutral means. Id.

The court affirmed the decision of the district court upholding the validity of the IDOT DBE program and found that it was narrowly tailored to further a compelling governmental interest. Id.

### 1A. Northern Contracting, Inc. v. Illinois, 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), aff'd 473 F.3d 715 (7th Cir. 2007)

This decision is the district court's order that was affirmed by the Seventh Circuit Court of Appeals and is instructive to the Consortium in that it is one of the recent cases to address the validity of the Federal DBE Program and a recipient's implementation of the program. The case also is instructive in that the court set forth a detailed analysis of race-, ethnicity-, and gender-neutral measures as well as evidentiary data required to satisfy constitutional scrutiny.

The district court conducted a trial after denying the parties' motions for summary judgment in Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004). The following summarizes the opinion of the district court.

Plaintiff NCI an Illinois highway contractor, sued the State of Illinois, the Illinois DOT, the United States DOT, and federal and state officials seeking a declaration that federal statutory provisions, the federal implementing regulations ("TEA-21"), the state statute authorizing the DBE program, and the Illinois DBE program itself were unlawful and unconstitutional. 2005 WL 2230195 at *1 (N.D. Ill. Sept, 8, 2005).

Under TEA-21, a recipient of federal funds is required to meet the "maximum feasible portion" of its DBE goal through race-neutral means. Id. at *4 (citing regulations). If a recipient projects that it cannot meet its overall DBE goal through race-neutral means, it must establish contract goals to the extent necessary to achieve the overall DBE goal. Id. (citing regulation). [The court provided an overview of the pertinent regulations including compliance requirements and qualifications for DBE status.]

**Statistical evidence.** To calculate its 2005 DBE participation goals, IDOT followed the two-step process set forth in TEA-21: (1) calculation of a base figure for the relative availability of DBEs, and (2) consideration of a possible adjustment of the base figure to reflect the effects of the DBE program and the level of participation that would be expected but for the effects of past and present discrimination. Id. at *6. IDOT engaged in a study to calculate its base figure and conduct a custom census to determine whether a more reliable method of calculation existed as opposed to IDOT's previous method of reviewing a bidder's list. Id.

In compliance with TEA-21, IDOT used a study to evaluate the base figure using a six-part analysis: (1) the study identified the appropriate and relevant geographic market for IDOT's contracting activity and its prime contractors as the State of Illinois; (2) the study identified the relevant product markets in which IDOT and its prime contractors contract; (3) the study sought to identify all available contractors and subcontractors in the relevant industries within Illinois using Dun & Bradstreet's Marketplace; (4) the study collected lists of DBEs from IDOT and twenty other public and private agencies; (5) the study attempted to correct for the possibility that certain businesses listed as DBEs were no longer qualified or, alternatively, businesses not listed as DBEs but qualified as such under the federal regulations; and (6) the study attempted to correct for the possibility that not all DBE businesses were listed in the various directories. Id. at *6-7. The study utilized a standard statistical sampling procedure to correct for the latter two biases. Id. at *7. The study thus calculated a weighted average base figure of 22.7 percent. Id.

IDOT then adjusted the base figure based upon two disparity studies and some reports considering whether the DBE availability figures were artificially low due to the effects of past discrimination. Id. at *8. One study examined disparities in earnings and business formation rates as between DBEs and their white male-owned counterparts. Id. Another study included a survey reporting that DBEs are rarely utilized in non-goals projects. Id.

IDOT considered three reports prepared by expert witnesses. Id. at *9. The first report concluded that minority- and women-owned businesses were underutilized relative to their capacity and that such underutilization was due to discrimination. Id. The second report concluded, after controlling for relevant variables such as credit worthiness, "that minorities and women are less likely to form businesses, and that when they do form businesses, those businesses achieve lower earnings than did businesses owned by white males." Id. The third report, again controlling for relevant variables (education, age, marital status, industry and wealth), concluded that minority- and female-owned businesses formation rates are lower than those of their white male counterparts, and that such businesses engage in a disproportionate amount of government work and contracts as a result of their inability to obtain private sector work. Id.

IDOT also conducted a series of public hearings in which a number of DBE owners who testified that they "were rarely, if ever, solicited to bid on projects not subject to disadvantaged-firm hiring goals." Id. Additionally, witnesses identified twenty prime contractors in IDOT District 1 alone who rarely or never solicited bids from DBEs on non-goals projects. Id. The prime contractors did not respond to IDOT's requests for information concerning their utilization of DBEs. Id.

Finally, IDOT reviewed unremediated market data from four different markets (the Illinois State Toll Highway Authority, the Missouri DOT, Cook County's public construction contracts, and a "non-goals" experiment conducted by IDOT between 2001 and 2002), and considered past utilization of DBEs on IDOT projects. Id. at *11. After analyzing all of the data, the study recommended an upward adjustment to 27.51 percent, however, IDOT decided to maintain its figure at 22.77 percent. Id.

IDOT's representative testified that the DBE program was administered on a "contract-by-contract basis." Id. She testified that DBE goals have no effect on the award of prime contracts but that contracts are awarded exclusively to the "lowest responsible bidder." IDOT also allowed contractors to petition for a waiver of individual contract goals in certain situations (e.g. where the contractor has been unable to meet the goal despite having made reasonable good faith efforts). Id. at *12. Between 2001 and 2004, IDOT received waiver requests on 8.53 percent of its contracts and granted three out of four; IDOT also provided an appeal procedure for a denial from a waiver request. Id.

IDOT implemented a number of race- and gender-neutral measures both in its fiscal year 2005 plan and in response to the district court's earlier summary judgment order, including:

1. A "prompt payment provision" in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments;

2. An extensive outreach program seeking to attract and assist DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking

sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects);

3. Reviewing the criteria for prequalification to reduce any unnecessary burdens;

4. "Unbundling" large contracts; and

5. Allocating some contracts for bidding only by firms meeting the SBA's definition of small businesses.

Id. (internal citations omitted). IDOT was also in the process of implementing bonding and financing initiatives to assist emerging contractors obtain guaranteed bonding and lines of credit, and establishing a mentor-protégé program. Id.

The court found that IDOT attempted to achieve the "maximum feasible portion" of its overall DBE goal through race- and gender-neutral measures. Id. at *13. The court found that IDOT determined that race- and gender-neutral measures would account for 6.43 percent of its DBE goal, leaving 16.34 percent to be reached using race- and gender-conscious measures. Id.

**Anecdotal evidence**. A number of DBE owners testified to instances of perceived discrimination and to the barriers they face. Id. The DBE owners also testified to difficulties in obtaining work in the private sector and "unanimously reported that they were rarely invited to bid on such contracts." Id. The DBE owners testified to a reluctance to submit unsolicited bids due to the expense involved and identified specific firms that solicited bids from DBEs for goals projects but not for non-goals projects. Id. A number of the witnesses also testified to specific instances of discrimination in bidding, on specific contracts, and in the financing and insurance markets. Id. at *13-14. One witness acknowledged that all small firms face difficulties in the financing and insurance markets, but testified that it is especially burdensome for DBEs who "frequently are forced to pay higher insurance rates due to racial and gender discrimination." Id. at *14. The DBE witnesses also testified they have obstacles in obtaining prompt payment. Id.

The plaintiff called a number of non-DBE business owners who unanimously testified that they solicit business equally from DBEs and non-DBEs on non-goals projects. Id. Some non-DBE firm owners testified that they solicit bids from DBEs on a goals project for work they would otherwise complete themselves absent the goals; others testified that they "occasionally award work to a DBE that was not the low bidder in order to avoid scrutiny from IDOT." Id. A number of non-DBE firm owners accused of failing to solicit bids from DBEs on non-goals projects, testified and denied the allegations. Id. at *15.

The court applied strict scrutiny to the program as a whole (including the gender-based preferences). Id. at *16. The court, however, set forth a different burden of proof, finding that the government must demonstrate identified discrimination with specificity and must have a "'strong basis in evidence' to conclude that remedial action was necessary, *before* it embarks on an affirmative action program … If the government makes such a showing, the party challenging the affirmative action plan bears the 'ultimate burden' of demonstrating the unconstitutionality of the program." Id. The court held that challenging party's burden "can only be met by presenting credible evidence to rebut the government's proffered data." Id. at *17.

To satisfy strict scrutiny, the court found that IDOT did not need to demonstrate an independent compelling interest; however, as part of the narrowly tailored prong, IDOT needed to show "that there is a demonstrable need for the implementation of the federal DBE program within its jurisdiction." Id. at *16.

The court found that IDOT presented "an abundance" of evidence documenting the disparities between DBEs and non-DBEs in the construction industry. Id. at *17. The plaintiff argued that the study was "erroneous because it failed to limit its DBE availability figures to those firms … registered and pre-qualified with IDOT." Id. The plaintiff also alleged the calculations of the DBE utilization rate were incorrect because the data included IDOT subcontracts and prime contracts, despite the fact that the latter are awarded to the lowest bidder as a matter of law. Id. Accordingly, the plaintiff alleged that IDOT's calculation of DBE availability and utilization rates was incorrect. Id.

The court found that other jurisdictions had utilized the custom census approach without successful challenge. Id. at *18. Additionally, the court found "that the remedial nature of the federal statutes counsels for the casting of a broader net when measuring DBE availability." Id. at *19. The court found that IDOT presented "an array of statistical studies concluding that DBEs face disproportionate hurdles in the credit, insurance, and bonding markets." Id. at *21. The court also found that the statistical studies were consistent with the anecdotal evidence. Id. The court did find, however, that "there was no evidence of even a single instance in which a prime contractor failed to award a job to a DBE that offered the low bid. This … is [also] supported by the statistical data … which shows that at least at the level of subcontracting, DBEs are generally utilized at a rate in line with their ability." Id. at *21, n. 31. Additionally, IDOT did not verify the anecdotal testimony of DBE firm owners who testified to barriers in financing and bonding, however, the court found that such verification was unnecessary. Id. at *21, n. 32.

The court further found:

> That such discrimination indirectly affects the ability of DBEs to compete for prime contracts, despite the fact that they are awarded solely on the basis of low bid, cannot be doubted: '[E]xperience and size are not race- and gender-neutral variables … [DBE] construction firms are generally smaller and less experienced because of industry discrimination.'

Id. at *21, citing Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003).

The parties stipulated to the fact that DBE utilization goals exceed DBE availability for 2003 and 2004. Id. at *22. IDOT alleged, and the court so found, that the high utilization on goals projects was due to the success of the DBE program, and not to an absence of discrimination. Id. The court found that the statistical disparities coupled with the anecdotal evidence indicated that IDOT's fiscal year 2005 goal was a "'plausible lower-bound estimate' of DBE participation in the absence of discrimination." Id. The court found that the plaintiff did not present persuasive evidence to contradict or explain IDOT's data. Id.

The plaintiff argued that even if accepted at face value, IDOT's marketplace data did not support the imposition of race- and gender-conscious remedies because there was no evidence of direct discrimination by prime contractors. Id. The court found first that IDOT's indirect evidence of discrimination in the bonding, financing, and insurance markets was sufficient to establish a compelling purpose. Id. Second, the court found:

> [m]ore importantly, Plaintiff fails to acknowledge that, in enacting its DBE program, IDOT acted not to remedy its own prior discriminatory practices, but pursuant to federal law, which both authorized and required IDOT to remediate the effects of private discrimination on federally-funded highway contracts. This is a fundamental distinction … . [A] state or local government need not independently identify a compelling interest when its actions come in the course of enforcing a federal statute.

Id. at *23. The court distinguished Builders Ass'n of Greater Chicago v. County of Cook, 123 F. Supp. 2d 1087 (N.D. Ill. 2000), aff'd 256 F.3d 642 (7th Cir. 2001), noting that the program in that case was not federally-funded. Id. at *23, n.34.

The court also found that "IDOT has done its best to maximize the portion of its DBE goal" through race- and gender-neutral measures, including anti-discrimination enforcement and small business initiatives. Id. at *24. The anti-discrimination efforts included: an internet website where a DBE can file an administrative complaint if it believes that a prime contractor is discriminating on the basis of race or gender in the award of sub-contracts; and requiring contractors seeking prequalification to maintain and produce solicitation records on all projects, both public and private, with and without goals, as well as records of the bids received and accepted. Id. The small business initiative included: "unbundling" large contracts; allocating some contracts for bidding only by firms meeting the SBA's definition of small businesses; a "prompt payment provision" in its contracts, requiring that subcontractors be paid promptly after they complete their work, and prohibiting prime contractors from delaying such payments; and an extensive outreach program seeking to attract and assist DBE and other small firms enter and achieve success in the industry (including retaining a network of consultants to provide management, technical and financial assistance to small businesses, and sponsoring networking sessions throughout the state to acquaint small firms with larger contractors and to encourage the involvement of small firms in major construction projects). Id.

The court found "[s]ignificantly, Plaintiff did not question the efficacy or sincerity of these race- and gender-neutral measures." Id. at *25. Additionally, the court found the DBE program had significant flexibility in that utilized contract-by-contract goal setting (without a fixed DBE participation minimum) and contained waiver provisions. Id. The court found that IDOT approved 70 percent of waiver requests although waivers were requested on only 8 percent of all contracts. Id., citing Adarand Constructors, Inc. v. Slater "Adarand VII", 228 F.3d 1147, 1177 (10th Cir. 2000) (citing for the proposition that flexibility and waiver are critically important).

The court held that IDOT's DBE plan was narrowly tailored to the goal of remedying the effects of racial and gender discrimination in the construction industry, and was therefore constitutional.

### 1B. Northern Contracting, Inc. v. State of Illinois, Illinois DOT, and USDOT, 2004 WL 422704 (N.D. Ill. March 3, 2004)

This is the earlier decision in Northern Contracting, Inc., 2005 WL 2230195 (N.D. Ill. Sept. 8, 2005), which resulted in the remand of the case to consider the implementation of the Federal DBE Program by the Illinois DOT. This case involves the challenge to the Federal DBE Program. The plaintiff contractor sued the Illinois Department of Transportation and the USDOT challenging the facial constitutionality of the Federal DBE Program (TEA-21 and 49 C.F.R. Part 26) as well as the implementation of the Federal Program by the Illinois Department of Transportation (i.e., the IDOT DBE Program). The court held valid the Federal DBE Program, finding there is a compelling governmental interest and the federal program is narrowly tailored. The court also held there are issues of fact regarding whether Illinois DOT's ("IDOT") DBE Program is narrowly tailored to achieve the federal government's compelling interest. The court denied the motions for summary judgment filed by the plaintiff and by IDOT, finding there were issues of material fact relating to IDOT's implementation of the Federal DBE Program.

The court in Northern Contracting held that there is an identified compelling governmental interest for implementing the Federal DBE Program and that the Federal DBE Program is narrowly tailored to further that interest. Therefore, the court granted the Federal Defendants' Motion for Summary Judgment challenging the validity of the Federal DBE Program. In this connection, the district court followed the decisions and analysis in Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F. 3d 964 (8th Cir. 2003) and Adarand Constructors, Inc. v. Slater, 228 F. 3d 1147 (10th Cir. 2000) ("Adarand VII"), cert. granted then dismissed as improvidently granted, 532 U.S. 941, 534 U.S. 103 (2001). The court held, like these two Courts of Appeals that have addressed this issue, that Congress had a strong basis in evidence to conclude that the DBE Program was necessary to redress private discrimination in federally-assisted highway subcontracting. The court agreed with the Adarand VII and Sherbrooke Turf courts that the evidence presented to Congress is sufficient to establish a compelling governmental interest, and that the contractors had not met their burden of introducing credible particularized evidence to rebut the Government's initial showing of the existence of a compelling interest in remedying the nationwide effects of past and present discrimination in the federal construction procurement subcontracting market. 2004 WL422704 at *34, citing Adarand VII, 228 F. 3d at 1175.

In addition, the court analyzed the second prong of the strict scrutiny test, whether the government provided sufficient evidence that its program is narrowly tailored. In making this determination, the court looked at several factors, such as the efficacy of alternative remedies; the flexibility and duration of the race-conscious remedies, including the availability of waiver provisions; the relationships between the numerical goals and relevant labor market; the impact of the remedy on third parties; and whether the program is over-or-under-inclusive. The narrow tailoring analysis with regard to the as-applied challenge focused on Illinois' implementation of the Federal DBE Program.

First, the court held that the Federal DBE Program does not mandate the use of race-conscious measures by recipients of federal dollars, but in fact requires only that the goal reflect the recipient's determination of the level of DBE participation it would expect absent the effects of the discrimination. 49 C.F.R. § 26.45(b). The court recognized, as found in the Sherbrooke Turf and Adarand VII cases, that the Federal Regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting, that although narrow

tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require "serious, good faith consideration of workable race-neutral alternatives." 2004 WL422704 at *36, citing and quoting Sherbooke Turf, 345 F. 3d at 972, quoting Grutter v. Bollinger, 539 U.S. 306 (2003). The court held that the federal regulations, which prohibit the use of quotas and severely limit the use of set-asides, meet this requirement. The court agreed with the Adarand VII and Sherbrooke Turf courts that the Federal DBE Program does require recipients to make a serious good faith consideration of workable race-neutral alternatives before turning to race-conscious measures.

Second, the court found that because the Federal DBE Program is subject to periodic reauthorization, and requires recipients of Federal dollars to review their programs annually, the Federal DBE scheme is appropriately limited to last no longer than necessary.

Third, the court held that the Federal DBE Program is flexible for many reasons, including that the presumption that women and minority are socially disadvantaged is deemed rebutted if an individual's personal net worth exceeds $750,000, and a firm owned by individual who is not presumptively disadvantaged may nevertheless qualify for such status if the firm can demonstrate that its owners are socially and economically disadvantaged. 49 C.F.R. § 26.67(b)(1)(d). The court found other aspects of the Federal Regulations provide ample flexibility, including recipients may obtain waivers or exemptions from any requirements. Recipients are not required to set a contract goal on every USDOT-assisted contract. If a recipient estimates that it can meet its entire overall goals for a given year through race-neutral means, it must implement the Program without setting contract goals during the year. If during the course of any year in which it is using contract goals a recipient determines that it will exceed its overall goals, it must adjust the use of race-conscious contract goals accordingly. 49 C.F.R. § 26.51(e)(f). Recipients also administering a DBE Program in good faith can not be penalized for failing to meet their DBE goals, and a recipient may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49 C.F.R. § 26.51(f). Further, a recipient may award a contract to a bidder/offeror that does not meet the DBE Participation goals so long as the bidder has made adequate good faith efforts to meet the goals. 49 C.F.R. § 26.53(a)(2). The regulations also prohibit the use of quotas. 49 C.F.R. § 26.43.

Fourth, the court agreed with the Sherbooke Turf court's assessment that the Federal DBE Program requires recipients to base DBE goals on the number of ready, willing and able disadvantaged business in the local market, and that this exercise requires recipients to establish realistic goals for DBE participation in the relevant labor markets.

Fifth, the court found that the DBE Program does not impose an unreasonable burden on third parties, including non-DBE subcontractors and taxpayers. The court found that the Federal DBE Program is a limited and properly tailored remedy to cure the effects of prior discrimination, a sharing of the burden by parties such as non-DBEs is not impermissible.

Finally, the court found that the Federal DBE Program was not over-inclusive because the regulations do not provide that every women and every member of a minority group is disadvantaged. Preferences are limited to small businesses with a specific average annual gross receipts over three fiscal years of $16.6 million or less (at the time of this decision), and businesses whose owners' personal net worth exceed $750,000 are excluded. 49 C.F.R. § 26.67(b)(1). A firm owned by a white male may qualify as social and economically disadvantaged. 49 C.F.R. § 26.67(d).

The court analyzed the constitutionality of the Illinois DBE Program. The court adopted the reasoning of the Eighth Circuit in Sherbrooke Turf, that a recipient's implementation of the Federal DBE Program must be analyzed under the narrow tailoring analysis but not the compelling interest inquiry. Therefore, the court agreed with Sherbrooke Turf that a recipient need not establish a distinct compelling interest before implementing the Federal DBE Program, but did conclude that a recipient's implementation of the Federal DBE Program must be narrowly tailored. The court found that issues of fact remain in terms of the validity of the Illinois DOT's DBE Program as implemented in terms of whether it was narrowly tailored to achieve the Federal Government's compelling interest. The court, therefore, denied the contractor plaintiff's Motion for Summary Judgment and the Illinois DOT's Motion for Summary Judgment.

### 2. Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, 345 F.3d 964 (8th Cir. 2003), cert. denied, 541 U.S. 1041 (2004)

This case is instructive in its analysis of local and state government DBE type programs and their evidentiary basis and implementation. This case also is instructive to the Consortium in its analysis of the narrowly tailored requirement for local and state government DBE programs. In upholding the challenged Federal DBE Program at issue in this case, the Eighth Circuit Court of Appeals emphasized the race-, ethnicity- and gender-neutral elements, the ultimate flexibility of the Program, and the fact the Program was tied closely only to labor markets with identified discrimination.

In Sherbrooke Turf, Inc. v. Minnesota DOT, and Gross Seed Company v. Nebraska Department of Road, the U.S. Court of Appeals for the Eighth Circuit upheld the constitutionality of the Federal DBE Program (49 CFR Part 26 ). The court held the Federal program was narrowly tailored to remedy a compelling governmental interest. The court also held the federal regulations governing the states' implementation of the Federal DBE Program were narrowly tailored, and the state DOT's implementation of the Federal DBE Program was narrowly tailored to serve a compelling government interest.

Sherbrooke and Gross Seed both contended that the Federal Highway DBE Program on its face and as applied in Minnesota and Nebraska violated the Equal Protection component of the Fifth Amendment's Due Process Clause. The Eighth Circuit engaged in a review of the Federal DBE Program and the implementation of the Program by the Minnesota DOT and the Nebraska Department of Roads under a strict scrutiny analysis and held that the Federal DBE Program was valid and constitutional and that the Minnesota DOT's and Nebraska DOR's implementation of the Program also was constitutional and valid. Applying the strict scrutiny analysis, the court first considered whether the Federal DBE Program established a compelling governmental interest, and found that it did. It concluded that Congress had a strong basis in evidence to support its conclusion that race-based measures were necessary for the reasons stated by the Tenth Circuit in Adarand, 228 F. 3d at 1167-76. Although the contractors presented evidence that challenged the data, they failed to present affirmative evidence that no remedial action was necessary because minority-owned small businesses enjoy non-discriminatory access to participation in highway contracts. Thus, the court held they failed to meet their ultimate burden to prove that the DBE Program is unconstitutional on this ground.

Finally, Sherbrooke and Gross Seed argued that the Minnesota DOT and Nebraska DOR must independently satisfy the compelling governmental interest test aspect of strict scrutiny review. The government argued, and the district courts' below agreed, that participating states need not independently meet the strict scrutiny standard because under the DBE Program the State must still comply with the DOT regulations. The Eighth Circuit held that this issue was not addressed by the Tenth Circuit in Adarand. The Eighth Circuit concluded that neither side's position is entirely sound.

The court rejected the contention of the contractors that their facial challenges to the DBE Program must be upheld unless the record before Congress included strong evidence of race discrimination in construction contracting in Minnesota and Nebraska. On the other hand, the court held a valid race-based program must be narrowly tailored, and to be narrowly tailored, a national program must be limited to those parts of the country where its race-based measures are demonstrably needed to the extent that federal government delegates this tailoring function, as a State's implementation becomes relevant to a reviewing court's strict scrutiny. Thus, the court left the question of state implementation to the narrow tailoring analysis.

The court held that a reviewing court applying strict scrutiny must determine if the race-based measure is narrowly tailored, that is, whether the means chosen to accomplish the government's asserted purpose are specifically and narrowly framed to accomplish that purpose. The contractors have the ultimate burden of establishing that the DBE Program is not narrowly tailored. Id. The compelling interest analysis focused on the record before Congress; the narrow-tailoring analysis looks at the roles of the implementing highway construction agencies.

For determining whether a race-conscious remedy is narrowly tailored, the court looked at factors such as the efficacy of alternative remedies, the flexibility and duration of the race-conscious remedy, the relationship of the numerical goals to the relevant labor market, and the impact of the remedy on third parties. Id. Under the DBE Program, a state receiving federal highway funds must, on an annual basis, submit to DOT an overall goal for DBE participation in its federally-funded highway contracts. See, 49 C.F.R. § 26.45(f)(1). The overall goal "must be based on demonstrable evidence" as to the number of DBEs who are ready, willing, and able to participate as contractors or subcontractors on federally-assisted contracts. 49 C.F.R. § 26.45(b). The number may be adjusted upward to reflect the state's determination that more DBEs would be participating absent the effects of discrimination, including race-related barriers to entry. See, 49 C.F.R. § 26.45(d).

The state must meet the "maximum feasible portion" of its overall goal by race-neutral means and must submit for approval a projection of the portion it expects to meet through race-neutral means. See, 49 C.F.R. § 26.45(a), (c). If race-neutral means are projected to fall short of achieving the overall goal, the state must give preference to firms it has certified as DBEs. However, such preferences may not include quotas. 49 C.F.R. § 26.45(b). During the course of the year, if a state determines that it will exceed or fall short of its overall goal, it must adjust its use of race-conscious and race-neutral methods "[t]o ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination." 49 C.F.R. § 26.51(f).

Absent bad faith administration of the program, a state's failure to achieve its overall goal will not be penalized. See, 49 C.F.R. § 26.47. If the state meets its overall goal for two consecutive years through race-neutral means, it is not required to set an annual goal until it does not meet its prior overall goal

for a year. See, 49 C.F.R. § 26.51(f)(3). In addition, USDOT may grant an exemption or waiver from any and all requirements of the Program. See, 49 C.F.R. § 26.15(b).

Like the district courts below, the Eighth Circuit concluded that the DOT regulations, on their face, satisfy the Supreme Court's narrowing tailoring requirements. First, the regulations place strong emphasis on the use of race-neutral means to increase minority business participation in government contracting. 345 F. 3d at 972. Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, but it does require serious good faith consideration of workable race-neutral alternatives. 345 F. 3d at 971, citing Grutter v. Bollinger, 539 U.S. 306.

Second, the revised DBE Program has substantial flexibility. A state may obtain waivers or exemptions from any requirements and is not penalized for a good faith effort to meet its overall goal. In addition, the Program limits preferences to small businesses falling beneath an earnings threshold, and any individual whose net worth exceeds $750,000 cannot qualify as economically disadvantaged. See, 49 C.F.R. § 26.67(b). Likewise, the DBE Program contains built-in durational limits, a state may terminate its DBE Program if it meets its annual overall goal through race-neutral means for two consecutive years. 49 C.F.R. § 26.51(f)(3).

Third, the court found, the USDOT has tied the goals for DBE participation to the relevant labor markets. The regulations require states to set overall goals based upon the likely number of minority contractors that would have received federal assisted highway contracts but for the effects of past discrimination. See, 49 C.F.R. § 26.45(c)-(d)(Steps 1 and 2). Though the underlying estimates may be inexact, the exercise requires the states to focus on establishing realistic goals for DBE participation in the relevant contacting markets. Id. at 972.

Finally, Congress and DOT have taken significant steps, the court held, to minimize the race-base nature of the DBE Program. Its benefits are directed at all small business owned and controlled by the socially and economically disadvantaged. While TEA-21 creates a rebuttable presumption that members of certain racial minorities fall within that class, the presumption is rebuttable, wealthy minority owners and wealthy minority-owned firms are excluded, and certification is available to persons who are not presumptably disadvantaged that demonstrate actual social and economic disadvantage. Thus, race is made relevant in the Program, but it is not a determinative factor. 345 F. 3d at 973. For these reasons, the court agreed with the district courts that the revised DBE Program is narrowly tailored on its face.

Sherbrooke and Gross Seed also argued that the DBE Program as applied in Minnesota and Nebraska is not narrowly tailored. Under the Federal Program, states set their own goals, based on local market conditions; their goals are not imposed by the Federal government nor do recipients have to tie them to any uniform national percentage. 345 F. 3d at 973, citing 64 Fed. Reg. at 5102.

The court analyzed what Minnesota and Nebraska did in connection with their implementation of the Federal DBE Program. Minnesota DOT commissioned a disparity study of the highway contracting market in Minnesota. The study group determined that DBEs made up 11.4 percent of the prime contractors and subcontractors in a highway construction market. Of this number 0.6 percent were minority-owned and 10.8 percent women-owned. Based upon its analysis of business formation statistics, the consultant estimated that the number of participating minority-owned business would be 34 percent higher in a race-neutral market. Therefore, the consultant adjusted its

DBE availability figure from 11.4 percent to 11.6 percent. Based on the study, Minnesota DOT adopted an overall goal of 11.6 percent DBE participation for Federally assisted highway projects. Minnesota DOT predicted that it would need to meet 9 percent of that overall goal through race and gender-conscious means, based on the fact DBE participation in state highway contracts dropped from 10.25 percent in 1998 to 2.25 percent in 1999 when its previous DBE Program was suspended by the injunction by the district court in an earlier decision in Sherbrooke. Minnesota DOT required each prime contract bidder to make a good faith effort to subcontract to prescribe portion of the project to DBEs, and determine that portion based on several individualized factors, including the availability of DBEs in the extent of subcontracting opportunities on the project.

The contractor presented evidence attacking the reliability of the data in the study, but it failed to establish that better data were available or that Minnesota DOT was otherwise unreasonable in undertaking this thorough analysis and relying on its results. Id. The precipitous drop in DBE participation when no race-conscious methods were employed, the court concluded, supports Minnesota DOT's conclusion that a substantial portion of its overall goal could not be met with race-neutral measures. Id. On that record, the court agreed with the district court that the revised DBE Program serves a compelling government interest and is narrowly tailored on its face and as applied in Minnesota.

In Nebraska, the Nebraska DOR commissioned a disparity study also to review availability and capability studies of DBE firms in the Nebraska highway construction market. The availability study found that between 1995 and 1999, when Nebraska followed the mandatory 10 percent set-aside requirement, 9.95 percent of all available and capable firms were DBEs, and DBE firms received 12.7 percent of the contract dollars on federally-assisted projects. After apportioning part of this DBE contracting to race-neutral contracting decisions, Nebraska DOR set an overall goal of 9.95 percent DBE participation and predicted that 4.82 percent of this overall goal would have to be achieved by race-and-gender conscious means. The Nebraska DOR required that prime contractors make a good faith effort to allocate a set portion of each contract's funds to DBE subcontractors. The Eighth Circuit concluded that Gross Seed, like Sherbrooke, failed to prove that the DBE Program is not narrowly tailored as applied in Nebraska. Therefore, the court affirmed the district courts' decisions in Gross Seed and Sherbrooke. (See district court opinions discussed infra.).

### 2A. Sherbrooke Turf, Inc. v. Minnesota DOT, 2001 WL 1502841, No. 00-CV-1026 (D. Minn. 2001) (unpublished opinion), aff'd 345 F.3d 964 (8th Cir. 2003)

Sherbrooke involved a landscaping service contractor owned and operated by white males. The contractor sued the Minnesota Department of Transportation claiming the Federal DBE Provisions of the Transportation Equity Act for the 21st Century ("TEA-21") are unconstitutional. Sherbrooke challenged the "federal affirmative action programs," the USDOT implementing regulations, and the Minnesota DOT's participation in the DBE Program. The United States Department of Transportation and the Federal Highway Administration intervened as Federal defendants in the case. Sherbrooke, 2001 WL 1502841 at *1.

The United States District Court in Sherbrooke relied substantially on the Tenth Circuit Court of Appeals decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), in holding that the Federal DBE Program is constitutional. The district court addressed the issue of "random inclusion" of various groups as being within the program in connection with whether the Federal

DBE Program is "narrowly tailored." The court held that Congress cannot enact a national program to remedy discrimination without recognizing classes of people whose history has shown them to be subject to discrimination and allowing states to include those people in its DBE program.

The court held that the Federal DBE Program attempts to avoid the "potentially invidious effects of providing blanket benefits to minorities" in part,

> by restricting a state's DBE preference to identified groups actually appearing in the target state. In practice, this means Minnesota can only certify members of one or another group as potential DBEs if they are present in the local market. This minimizes the chance that individuals – simply on the basis of their birth – will benefit from Minnesota's DBE program. If a group is not present in the local market, or if they are found in such small numbers that they cannot be expected to be able to participate in the kinds of construction work TEA-21 covers, that group will not be included in the accounting used to set Minnesota's overall DBE contracting goal.

Sherbrooke, 2001 WL 1502841 at *10 (D. Minn.).

The court rejected plaintiff's claim that the Minnesota DOT must independently demonstrate how its program comports with Croson's strict scrutiny standard. The court held that the "Constitution calls out far different requirements when a state implements a federal affirmative action program, as opposed to those occasions when a state or locality initiates the program." Id. at *11 (emphasis added). The court, in a footnote ruled that TEA-21, being a federal program, "relieves the state of any burden to independently carry the strict scrutiny burden." Id. at *11 n.3. The court held states that establish DBE programs under TEA-21 and 49 C.F.R. Part 26 are implementing a congressionally required program and not establishing a local one. As such, the court concluded that the state need not independently prove its DBE program meets the strict scrutiny standard. Id.

### 3. Gross Seed Co. v. Nebraska Department of Roads, Civil Action File No. 4:00CV3073 (D. Neb. May 6, 2002), aff'd 345 F. 3d 964 (8th Cir. 2003)

The United States District Court for the District of Nebraska held in Gross Seed Co. v. Nebraska (with the United States DOT and Federal Highway Administration as Interveners), that the Federal DBE Program (codified at 49 C.F.R. Part 26) is constitutional. The court also held that the Nebraska Department of Roads ("NDOR") DBE Program adopted and implemented solely to comply with the Federal DBE Program is "approved" by the court because the court found that 49 C.F.R. Part 26 and TEA-21 were constitutional.

The court concluded, similar to the court in Sherbrooke Turf, that the State of Nebraska did not need to independently establish that its program met the strict scrutiny requirement because the Federal DBE Program satisfied that requirement, and was therefore constitutional. The court did not engage in a thorough analysis or evaluation of the NDOR Program or its implementation of the Federal DBE Program. The court points out that the NDOR Program is adopted in compliance with the Federal DBE Program, and that the USDOT approved the use of NDOR's proposed DBE goals for fiscal year 2001, pending completion of USDOT's review of those goals. Significantly, however, the court in its findings does note that the NDOR established its overall goals for fiscal year 2001 based upon an independent availability/disparity study.

The court upheld the constitutionality of the Federal DBE Program by finding the evidence presented by the federal government and the history of the federal legislation is sufficient to demonstrate that past discrimination does exist "in the construction industry" and that racial and gender discrimination "within the construction industry" is sufficient to demonstrate a compelling interest in individual areas, such as highway construction. The court held that the Federal DBE Program was sufficiently "narrowly tailored" to satisfy strict scrutiny analysis based again on the evidence submitted by the federal government as to the Federal DBE Program.

#### 4. Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000) cert. granted then dismissed as improvidently granted sub nom. Adarand Constructors, Inc. v. Mineta, 532 U.S. 941, 534 U.S. 103 (2001)

This is the Adarand decision by the United States Court of Appeals for the Tenth Circuit, which was on remand from the earlier Supreme Court decision applying the strict scrutiny analysis to any constitutional challenge to the Federal DBE Program. See Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995). The decision of the Tenth Circuit in this case was considered by the United States Supreme Court, after that court granted certiorari to consider certain issues raised on appeal. The Supreme Court subsequently dismissed the writ of certiorari "as improvidently granted" without reaching the merits of the case. The court did not decide the constitutionality of the Federal DBE Program as it applies to state DOTs or local governments.

The Supreme Court held that the Tenth Circuit had not considered the issue before the Supreme Court on certiorari, namely whether a race-based program applicable to direct federal contracting is constitutional. This issue is distinguished from the issue of the constitutionality of the USDOT DBE Program as it pertains to procurement of federal funds for highway projects let by States, and the implementation of the Federal DBE Program by state DOTs. Therefore, the Supreme Court held it would not reach the merits of a challenge to federal laws relating to direct federal procurement.

Turning to the Tenth Circuit decision in Adarand Constructors, Inc. v. Slater, 228 F.3d 1147 (10th Cir. 2000), the Tenth Circuit upheld in general the facial constitutionality of the Federal DBE Program. The court found that the federal government had a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of federal funds and in remediating the effects of past discrimination in government contracting, and that the evidence supported the existence of past and present discrimination sufficient to justify the Federal DBE Program. The court also held that the Federal DBE Program is "narrowly tailored," and therefore upheld the constitutionality of the Federal DBE Program.

It is significant to note that the court in determining the Federal DBE Program is "narrowly tailored" focused on the current regulations, 49 C.F.R. Part 26, and in particular § 26.1(a), (b), and (f). The court pointed out that the Federal Regulations instruct recipients as follows:

> [y]ou must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation, 49 C.F.R. § 26.51(a)(2000); see also 49 C.F.R. § 26.51(f)(2000) (if a recipient can meet its overall goal through race-neutral means, it must implement its program without the use of race-conscious contracting measures), and enumerate a list of race-neutral measures, see 49 C.F.R. § 26.51(b)(2000). The current regulations also outline several race-neutral means available to program recipients including assistance in overcoming bonding and

> financing obstacles, providing technical assistance, establishing programs to assist start-up firms, and other methods. See 49 C.F.R. § 26.51(b). We therefore are dealing here with revisions that emphasize the continuing need to employ non-race-conscious methods even as the need for race-conscious remedies is recognized.

228 F.3d at 1178-1179.

In considering whether the Federal DBE Program is narrowly tailored, the court also addressed the argument made by the contractor that the program is over- and under-inclusive for several reasons, including that Congress did not inquire into discrimination against each particular minority racial or ethnic group. The court held that insofar as the scope of inquiry suggested was a particular state's construction industry alone, this would be at odds with its holding regarding the compelling interest in Congress's power to enact nationwide legislation. Id. at 1185-1186. The court held that because of the "unreliability of racial and ethnic categories and the fact that discrimination commonly occurs based on much broader racial classifications," extrapolating findings of discrimination against the various ethnic groups "is more a question of nomenclature than of narrow tailoring." Id. The court found that the "Constitution does not erect a barrier to the government's effort to combat discrimination based on broad racial classifications that might prevent it from enumerating particular ethnic origins falling within such classifications." Id.

Finally, the Tenth Circuit did not specifically address a challenge to the letting of federally-funded construction contracts by state departments of transportation. The court pointed out that plaintiff Adarand "conceded that its challenge in the instant case is to 'the federal program, implemented by federal officials,' and not to the letting of federally-funded construction contracts by state agencies." 228 F.3d at 1187. The court held that it did not have before it a sufficient record to enable it to evaluate the separate question of Colorado DOT's implementation of race-conscious policies. Id. at 1187-1188.

#### 5. Houston Contrs. Ass'n v. Metro. Transit Auth., 189 F.3d 467 (5th Cir. 1999)

In this case, the Fifth Circuit vacated a district court opinion ruling on summary judgment against a DBE program. The court noted a sharp conflict in the evidence regarding how the Metropolitan Transit Authority's ("Metro's") DBE program operates in practice. According to Metro's evidence, its DBE program was an outreach program instituted to reach DBE participation goals. Metro claimed that all that is required of the contractors is that they contact DBEs and give them an opportunity to bid as subcontractors on the project. The plaintiff's witnesses, on the other hand, contended that Metro coerced prime contractors into using race and sex in selecting subcontractors as a condition to securing Metro contracts. The plaintiff contended that the participation percentages were not "goals"; rather they required contractors to meet a coercive quota.

The court, asserting these factual issues, vacated the summary judgment order of the District court declaring Metro's DBE program unconstitutional as applied to non-federally-funded contracts. The court also vacated the injunction predicated on this conclusion, and remanded the case to the district court for further proceedings. The court vacated the injunction on federally-funded contracts because the court had not permitted the United States to intervene as a party.

### 6. Klaver Construction, Inc. v. Kansas DOT, 211 F. Supp. 2d 1296 (D. Kan. 2002)

This is another case that involved a challenge to the USDOT Regulations that implement TEA-21 (49 C.F.R. Part 26), in which the plaintiff contractor sought to enjoin the Kansas Department of Transportation ("DOT") from enforcing its DBE Program on the grounds that it violates the Equal Protection Clause under the Fourteenth Amendment. This case involves a direct constitutional challenge to racial and gender preferences in federally-funded state highway contracts. This case concerned the constitutionality of the Kansas DOT's implementation of the federally-funded DBE Program, and the constitutionality of the gender-based policies of the federal government and the race- and gender-based policies of the Kansas DOT. The court granted the Federal and State defendants' (USDOT and Kansas DOT) Motions to Dismiss based on lack of standing. The court held the contractor could not show the specific aspects of the DBE program that it contends are unconstitutional have caused its alleged injuries.

## V. Recent Decisions and Authorities Involving Federal Procurement That May Impact The Consortium Agencies' DBE Enterprise Programs.

### A. Rothe Development Corp. v. U.S. Department of Defense, 545 F.3d 1023 (Fed. Cir. 2008)

Although this case does not involve the Federal DBE Program (49 C.F.R. Part 26), it is an analogous case that may impact the legal analysis and law related to the validity of programs implemented by recipients of federal funds, including the Federal DBE Program. Additionally, it underscores the requirement that race-, ethnic- and gender-based programs of any nature must be supported by substantial evidence. In Rothe, an unsuccessful bidder on a federal defense contract brought suit alleging that the application of an evaluation preference, pursuant to a federal statute, to a small disadvantaged bidder (SDB) to whom a contract was awarded, violated the Equal Protection clause of the U.S. Constitution. The federal statute challenged is Section 1207 of the National Defense Authorization Act of 1987 and as reauthorized in 2003. The statute provides a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantages individuals. 10 U.S.C. § 2323. Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms upwards by 10 percent (the "Price Evaluation Adjustment Program" or "PEA").

The district court in 2004 held the federal statute, as reauthorized in 2003, was constitutional on its face. 324 F.Supp. 2d 840 (W.D. Tex. 2004). The court held the 5% goal and the PEA program as reauthorized in 1992 and applied in 1998 was unconstitutional. The basis of the decision was that Congress considered statistical evidence of discrimination that established a compelling governmental interest in the reauthorization of the statute and PEA program in 2003. Congress had not documented or considered substantial statistical evidence that the DOD discriminated against minority small businesses when it enacted the statute in 1992 and reauthorized it in 1998. The Plaintiff appealed the decision.

The Federal Circuit in 2005 found that the "analysis of the facial constitutionality of an act is limited to evidence before Congress prior to the date of reauthorization." 413 F.3d 1327 (Fed. Cir.

2005)(affirming in part, vacating in part, and remanding 324 F. Supp. 2d 840 (W.D. Tex. 2004)). The court limited its review to whether Congress had sufficient evidence in 1992 to reauthorize the provisions in 1207. The court held that for evidence to be relevant to a strict scrutiny analysis, "the evidence must be proven to have been before Congress prior to enactment of the racial classification." The Federal Circuit held that the District court erred in relying on the statistical studies without first determining whether the studies were before Congress when it reauthorized section 1207. The Federal Circuit remanded the case and directed the district court to consider whether the data presented was so outdated that it did not provide the requisite strong basis in evidence to support the reauthorization of section 1207.

**2007 Order of the District Court (499 F.Supp. 2d 775).** On August 10, 2007 the federal district court for the Western District of Texas in Rothe Development Corp. v. U.S. Dept. of Defense, 499 F.Supp.2d 775 (W.D.Tex. Aug 10, 2007) issued its Order on remand from the Federal Circuit Court of Appeals decision in Rothe, 413 F.3d 1327 (Fed Cir. 2005). The district court upheld the constitutionality of the 2006 Reauthorization of Section 1207 of the National Defense Authorization Act of 1987 (10 USC § 2323), which permits the U.S. Department of Defense to provide preferences in selecting bids submitted by small businesses owned by socially and economically disadvantaged individuals ("SDBs"). The district court found the 2006 Reauthorization of the 1207 Program satisfied strict scrutiny, holding that Congress had a compelling interest when it reauthorized the 1207 Program in 2006, that there was sufficient statistical and anecdotal evidence before Congress to establish a compelling interest, and that the reauthorization in 2006 was narrowly tailored.

The district court, among its many findings, found certain evidence before Congress was "stale," that the Plaintiff contractor (Rothe) failed to rebut other evidence which was not stale, and that the decisions by the Eighth, Ninth and Tenth Circuits in the decisions in Concrete Works, Adarand Constructors, Sherbrooke Turf and Western States Paving (discussed above and below) were relevant to the evaluation of the facial constitutionality of the 2006 Reauthorization.

In the Section 1207 Act, Congress set a goal that 5 percent of the total dollar amount of defense contracts for each fiscal year would be awarded to small businesses owned and controlled by socially and economically disadvantaged individuals. In order to achieve that goal, Congress authorized the DOD to adjust bids submitted by non-socially and economically disadvantaged firms up to 10 percent (the "Price Evaluation Adjustment Program" or "PEA") 10 U.S.C. § 2323(e)(3). Rothe, 499 F.Supp.2d. at 782. Plaintiff Rothe did not qualify as an SDB because it was owned by a Caucasian female. Although Rothe was technically the lowest bidder on a DOD contract, its bid was adjusted upward by 10 percent, and a third party, who qualified as a SDB, became the "lowest" bidder and was awarded the contract. Id. Rothe claims that the 1207 Program is facially unconstitutional because it takes race into consideration in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment. Id. at 782-83. The district court's decision only reviewed the facial constitutionality of the 2006 Reauthorization of the 2007 Program.

The district court initially rejected six legal arguments made by Rothe regarding strict scrutiny review based on the rejection of the same arguments by the Eighth, Ninth, and Tenth Circuit Courts of Appeal in the Sherbrooke Turf, Western States Paving, Concrete Works, Adarand VII cases, and the Federal Circuit Court of Appeal in Rothe. Rothe at 825-833.

The district court discussed and cited the decisions in Adarand VII (2000), Sherbrooke Turf (2003), and Western States Paving (2005), as holding that Congress had a compelling interest in eradicating the economic roots of racial discrimination in highway transportation programs funded by federal monies, and concluding that the evidence cited by the government, particularly that contained in The Compelling Interest (a.k.a. the Appendix), more than satisfied the government's burden of production regarding the compelling interest for a race-conscious remedy. Rothe at 827. Because the Urban Institute Report, which presented its analysis of 39 state and local disparity studies, was cross-referenced in the Appendix, the district court found the courts in Adarand VII, Sherbrooke Turf, and Western States Paving, also relied on it in support of their compelling interest holding. Id. at 827.

The district court also found that the Tenth Circuit decision in Concrete Works IV, 321 F.3d 950 (10th Cir. 2003), established legal principles that are relevant to the court's strict scrutiny analysis. First, Rothe's claims for declaratory judgment on the racial constitutionality of the earlier 1999 and 2002 Reauthorizations were moot. Second, the government can meet its burden of production without conclusively proving the existence of past or present racial discrimination. Third, the government may establish its own compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Fourth, once the government meets its burden of production, Rothe must introduce "credible, particularized" evidence to rebut the government's initial showing of the existence of a compelling interest. Fifth, Rothe may rebut the government's statistical evidence by giving a race-neutral explanation for the statistical disparities, showing that the statistics are flawed, demonstrating that the disparities shown are not significant or actionable, or presenting contrasting statistical data. Sixth, the government may rely on disparity studies to support its compelling interest, and those studies may control for the effect that pre-existing affirmative action programs have on the statistical analysis. Id. at 829-32.

Based on Concrete Works IV, the district court did not require the government to conclusively prove that there is pervasive discrimination in the relevant market, that each presumptively disadvantaged group suffered equally from discrimination, or that private firms intentionally and purposefully discriminated against minorities. The court found that the inference of discriminatory exclusion can arise from statistical disparities. Id. at 830-31.

The district court held that Congress had a compelling interest in the 2006 Reauthorization of the 1207 Program, which was supported by a strong basis in the evidence. The court relied in significant part upon six state and local disparity studies that were before Congress prior to the 2006 Reauthorization of the 1207 Program. The court based this evidence on its finding that Senator Kennedy had referenced these disparity studies, discussed and summarized findings of the disparity studies, and Representative Cynthia McKinney also cited the same six disparity studies that Senator Kennedy referenced. The court stated that based on the content of the floor debate, it found that these studies were put before Congress prior to the date of the Reauthorization of Section 1207. Id. at 838.

The district court found that these six state and local disparity studies analyzed evidence of discrimination from a diverse cross-section of jurisdictions across the United States, and "they constitute prima facie evidence of a nation-wide pattern or practice of discrimination in public and private contracting." Id. at 838-39. The court found that the data used in these six disparity studies is not "stale" for purposes of strict scrutiny review. Id. at 839. The court disagreed with Rothe's argument that all the data was stale (data in the studies from 1997 through 2002), "because this data was the most current data available at the time that these studies were performed." Id. The court found that the governmental entities should be able to rely on the most recently available data so long as that data is reasonably up-to-date. Id. The court declined to adopt a "bright-line rule for determining staleness." Id.

The court referred to the reliance by the Ninth Circuit and the Eighth Circuit on the *Appendix* to affirm the constitutionality of the United States Department of Transportation MBE [now DBE] Program, and rejected five years as a bright-line rule for considering whether data is "stale." Id. at n.86. The court also stated that it "accepts the reasoning of the *Appendix*, which the court found stated that for the most part "the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities." Id. at 839, quoting 61 Fed.Reg. 26042-01, 26061 (1996).

The district court also discussed additional evidence before Congress that it found in Congressional Committee Reports and Hearing Records. Id. at 865-71. The court noted SBA Reports that were before Congress prior to the 2006 Reauthorization. Id. at 871.

The district court found that the data contained in the *Appendix*, the Benchmark Study, and the Urban Institute Report was "stale," and the court did not consider those reports as evidence of a compelling interest for the 2006 Reauthorization. Id. at 872-75. The court stated that the Eighth, Ninth and Tenth Circuits relied on the *Appendix* to uphold the constitutionality of the Federal DBE Program, citing to the decisions in Sherbrooke Turf, Adarand VII, and Western States Paving. Id. at 872. The court pointed out that although it does not rely on the data contained in the Appendix to support the 2006 Reauthorization, the fact the Eighth, Ninth, and Tenth Circuits relied on this data to uphold the constitutionality of the Federal DBE Program as recently as 2005, convinced the court that a bright-line staleness rule is inappropriate. Id. at 874.

Although the court found that the data contained in the *Appendix*, the Urban Institute Report, and the Benchmark Study was stale for purposes of strict scrutiny review regarding the 2006 Reauthorization, the court found that Rothe introduced no concrete, particularized evidence challenging the reliability of the methodology or the data contained in the six state and local disparity studies, and other evidence before Congress. The court found that Rothe failed to rebut the data, methodology or anecdotal evidence with "concrete, particularized" evidence to the contrary. Id. at 875. The district court held that based on the studies, the government had satisfied its burden of producing evidence of discrimination against African Americans, Asian Americans, Hispanic Americans, and Native Americans in the relevant industry sectors. Id. at 876.

The district court found that Congress had a compelling interest in reauthorizing the 1207 Program in 2006, which was supported by a strong basis of evidence for remedial action. Id. at 877. The

court held that the evidence constituted prima facie proof of a nationwide pattern or practice of discrimination in both public and private contracting, that Congress had sufficient evidence of discrimination throughout the United States to justify a nationwide program, and the evidence of discrimination was sufficiently pervasive across racial lines to justify granting a preference to all five purportedly disadvantaged racial groups. Id.

The district court also found that the 2006 Reauthorization of the 1207 Program was narrowly tailored and designed to correct present discrimination and to counter the lingering effects of past discrimination. The court held that the government's involvement in both present discrimination and the lingering effects of past discrimination was so pervasive that the Department of Defense and Department of Air Force had become passive participants in perpetuating it. Id. The court stated it was law of the case and could not be disturbed on remand that the Federal Circuit in Rothe III had held that the 1207 Program was flexible in application, limited in duration and it did not unduly impact on the rights of third parties. Id., quoting Rothe III, 262 F.3d at 1331.

The district court thus conducted a narrowly tailored analysis that reviewed three factors:

1. The efficacy of race-neutral alternatives;
2. Evidence detailing the relationship between the stated numerical goal of 5 percent and the relevant market; and
3. Over- and under-inclusiveness.

Id. The court found that Congress examined the efficacy of race-neutral alternatives prior to the enactment of the 1207 Program in 1986 and that these programs were unsuccessful in remedying the effects of past and present discrimination in the federal procurement. Id. The court concluded that Congress had attempted to address the issues through race-neutral measures, discussed those measures, and found that Congress' adoption of race-conscious provisions were justified by the ineffectiveness of such race-neutral measures in helping minority-owned firms overcome barriers. Id. The court found that the government seriously considered and enacted race-neutral alternatives, but these race-neutral programs did not remedy the widespread discrimination that affected the federal procurement sector, and that Congress was not required to implement or exhaust every conceivable race-neutral alternative. Id. at 880. Rather, the court found that narrow tailoring requires only "serious, good faith consideration of workable race-neutral alternatives." Id.

The district court also found that the 5 percent goal was related to the minority business availability identified in the six state and local disparity studies. Id. at 881. The court concluded that the 5 percent goal was aspirational, not mandatory. Id. at 882. The court then examined and found that the regulations implementing the 1207 Program were not over-inclusive for several reasons.

**November 4, 2008 Decision by the Federal Circuit Court of Appeals.** On November 4, 2008, the Federal Circuit Court of Appeals reversed the judgment of the District Court in part, and remanded with instructions to enter a judgment (1) denying Rothe any relief regarding the facial constitutionality of Section 1207 as enacted in 1999 or 2002, (2) declaring that Section 1207 as enacted in 2006 (10 U.S.C. § 2323) is facially unconstitutional, and (3) enjoining application of Section 1207 (10 U.S.C. § 2323).

The Federal Circuit Court of Appeals held that Section 1207, on its face, as reenacted in 2006, violated the Equal Protection component of the Fifth Amendment right to due process. The Court found that because the statute authorized the Department of Defense to afford preferential treatment on the basis of race, the Court applied strict scrutiny, and because Congress did not have a "strong basis in evidence" upon which to conclude that the Department of Defense was a passive participant in pervasive, nationwide racial discrimination – at least not on the evidence produced by the Department of Defense and relied on by the District Court in this case – Section 1207 failed to meet this strict scrutiny test. 545 F.3d at 1050.

**Strict scrutiny framework.** The Court recognized that the Supreme Court has held a government may have a compelling interest in remedying the effects of past or present racial discrimination. 545 F.3d at 1036. The Court cited the decision in Croson, 488 U.S. at 492, that it is "beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice." 545 F.3d. at 1036, quoting Closon, 488 U.S. at 492.

The Court held that before resorting to race-conscious measures, the government must identify the discrimination to be remedied, public or private, with some specificity, and must have a strong basis of evidence upon which to conclude that remedial action is necessary. 545 F.3d at 1036, quoting Closon, 488 U.S. at 500, 504. Although the party challenging the statute bears the ultimate burden of persuading the court that it is unconstitutional, the Federal Circuit stated that the government first bears a burden to produce strong evidence supporting the legislature's decision to employ race-conscious action. 545 F.3d at 1036.

Even where there is a compelling interest supported by strong basis in evidence, the Court held the statute must be narrowly tailored to further that interest. Id. The Court noted that a narrow tailoring analysis commonly involves six factors: (1) the necessity of relief; (2) the efficacy of alternative, race-neutral remedies; (3) the flexibility of relief, including the availability of waiver provisions; (4) the relationship with the stated numerical goal to the relevant labor market; (5) the impact of relief on the rights of third parties; and (6) the overinclusiveness or underinclusiveness of the racial classification. Id.

**Compelling interest – strong basis in evidence.** The Federal Circuit pointed out that the statistical and anecdotal evidence relied upon by the district court in its ruling below included six disparity studies of state or local contracting. The Federal Circuit also pointed out that the district court found that the data contained in the Appendix, the Urban Institute Report, and the Benchmark Study was stale for purposes of strict scrutiny review of the 2006 Authorization, and therefore, the district court concluded that it would not rely on those three reports as evidence of a compelling interest for the 2006 reauthorization of the 1207 Program. 545 F.3d 1023, citing to Rothe VI, 499 F.Supp. 2d at 875. Since the Department of Defense did not challenge this finding on appeal, the Federal Circuit stated that it would not consider the Appendix, the Urban Institute Report, or the Department of Commerce Benchmark Study, and instead determined whether the evidence relied on by the district court was sufficient to demonstrate a compelling interest. Id.

**Six state and local disparity studies.** The Federal Circuit found that disparity studies can be relevant to the compelling interest analysis because, as explained by the Supreme Court in Croson, "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by [a] locality or the locality's prime contractors, an inference of discriminatory exclusion could arise." 545 F.3d at 1037-1038, quoting Croson, 488 U.S.C. at 509. The Federal Circuit also cited to the decision by the Fifth Circuit Court of Appeals in W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999) that given Croson's emphasis on statistical evidence, other courts considering equal protection challenges to minority-participation programs have looked to disparity indices, or to computations of disparity percentages, in determining whether Croson's evidentiary burden is satisfied. 545 F.3d at 1038, quoting W.H. Scott, 199 F.3d at 218.

The Court noted that a disparity study is a study attempting to measure the difference or disparity between the number of contracts or contract dollars actually awarded minority-owned businesses in a particular contract market, on the one hand, and the number of contracts or contract dollars that one would expect to be awarded to minority-owned businesses given their presence in that particular contract market, on the other hand. 545 F.3d at 1037.

**Staleness.** The Federal Circuit declined to adopt a per se rule that data more than five years old is stale per se, which rejected the argument put forth by Rothe. 545 F.3d at 1038. The Court pointed out that the district court noted other circuit courts have relied on studies containing data more than five years old when conducting compelling interest analyses, citing to Western States Paving v. Washington State Department of Transportation, 407 F.3d 983, 992 (9th Cir. 2005) and Sherbrooke Turf, Inc. v. Minnesota Department of Transportation, 345 F.3d 964, 970 (8th Cir. 2003)(relying on the Appendix, published in 1996).

The Federal Circuit agreed with the district court that Congress "should be able to rely on the most recently available data so long as that data is reasonably up-to-date." 545 F.3d at 1039. The Court affirmed the district court's conclusion that the data analyzed in the six disparity studies was not stale at the relevant time because the disparity studies analyzed data pertained to contracts awarded as recently as 2000 or even 2003, and because Rothe did not point to more recent, available data. Id.

**Before Congress.** The Court found that for evidence to be relevant in the strict scrutiny analysis, it "must be proven to have been before Congress prior to enactment of the racial classification." 545 F.3d at 1039, quoting Rothe V, 413 F.3d at 1338. The Federal Circuit had issues with determining whether the six disparity studies were actually before Congress for several reasons, including that there was no indication that these studies were debated or reviewed by members of Congress or by any witnesses, and because Congress made no findings concerning these studies. 545 F.3d at 1039-1040. However, the Court determined it need not decide whether the six studies were put before Congress, because the Court held in any event that the studies did not provide a substantially probative and broad-based statistical foundation necessary for the strong basis in evidence that must be the predicate for nation-wide, race-conscious action. Id. at 1040.

The Court did note that findings regarding disparity studies are to be distinguished from formal findings of discrimination by the Department of Defense "which Congress was emphatically not required to make." Id. at 1040, footnote 11 (emphasis in original). The Federal Circuit cited the Dean v. City of Shreveport case that the "government need not incriminate itself with a formal

finding of discrimination prior to using a race-conscious remedy." 545 F.3d at 1040, footnote 11 quoting Dean v. City of Shreveport, 438 F.3d 448, 445 (5th Cir. 2006).

**Methodology.** The Court found that there were methodological defects in the six disparity studies. The Court found that the objections to the parameters used to select the relevant pool of contractors was one of the major defects in the studies. 545 F.3d at 1040-1041.

The Court stated that in general, "[a] disparity ratio less than 0.80" — i.e., a finding that a given minority group received less than 80 percent of the expected amount — "indicates a relevant degree of disparity," and "might support an inference of discrimination." 545 F.3d at 1041, quoting the District Court opinion in Rothe VI, 499 F.Supp. 2d at 842; and citing Engineering Contractors Association of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895, 914 (11th Cir. 1997). The Court noted that this disparity ratio attempts to calculate a ratio between the expected contract amount of a given race/gender group and the actual contract amount received by that group. 545 F.3d at 1041.

The Court considered the availability analysis, or benchmark analysis, which is utilized to ensure that only those minority-owned contractors who are qualified, willing and able to perform the prime contracts at issue are considered when performing the denominator of a disparity ratio. 545 F.3d at 1041. The Court cited to an expert used in the case that a "crucial question" in disparity studies is to develop a credible methodology to estimate this benchmark share of contracts minorities would receive in the absence of discrimination and the touchstone for measuring the benchmark is to determine whether the firm is ready, willing, and able to do business with the government. 545 F.3d at 1041-1042.

The Court concluded the contention by Rothe, that the six studies misapplied this "touchstone" of Croson and erroneously included minority-owned firms that were deemed willing or potentially willing and able, without regard to whether the firm was qualified, was not a defect that substantially undercut the results of four of the six studies, because "the bulk of the businesses considered in these studies were identified in ways that would tend to establish their qualifications, such as by their presence on city contract records and bidder lists." 545 F.3d at 1042. The Court noted that with regard to these studies available prime contractors were identified via certification lists, survey of chamber membership and trade association membership lists, public agency and certification lists, utilized prime contractor, bidder lists, county and other government records and other type lists. Id.

The Court stated it was less confident in the determination of qualified minority owned businesses by the two other studies because the availability methodology employed in those studies, the Court found, appeared less likely to have weeded out unqualified businesses. Id. However, the Court stated it was more troubled by the failure of five of the studies to account officially for potential differences in size, or "relative capacity," of the business included in those studies. 545 F.3d at 1042-1043.

The Court noted that qualified firms may have substantially different capacities and thus might be expected to bring in substantially different amounts of business even in the absence of discrimination. 545 F.3d at 1043. The Court referred to the Eleventh Circuit explanation similarly that because firms are bigger, bigger firms have a bigger chance to win bigger contracts, and thus one would expect the bigger (on average) non-MWBE firms to get a disproportionately higher percentage of total construction dollars awarded than the smaller MWBE firms. 545 F.3d at 1043 quoting Engineering

Contractors Association, 122 F.3d at 917. The Court pointed out its issues with the studies accounting for the relative sizes of contracts awarded to minority-owned businesses, but not considering the relative sizes of the businesses themselves. Id. at 1043.

The Court noted that the studies measured the availability of minority-owned businesses by the percentage of firms in the market owned by minorities, instead of by the percentage of total marketplace capacity those firms could provide. Id. The Court said that for a disparity ratio to have a significant probative value, the same time period and metric (dollars or numbers) should be used in measuring the utilization and availability shares. 545 F.3d at 1044, n. 12.

The Court stated that while these parameters relating to the firm size may have ensured that each minority-owned business in the studies met a capacity threshold, these parameters did not account for the relative capacities of businesses to bid for more than one contract at a time, which failure rendered the disparity ratios calculated by the studies substantially less probative on their own, of the likelihood of discrimination. Id. at 1044. The Court pointed out that the studies could have accounted for firm size even without changing the disparity ratio methodologies by employing regression analysis to determine whether there was a statistically significant correlation between the size of a firm and the share of contract dollars awarded to it. 545 F.3d at 1044 citing to Engineering Contractors Association, 122 F.3d at 917. The Court noted that only one of the studies conducted this type of regression analysis, which included the independent variables of a firm-age of a company, owner education level, number of employees, percent of revenue from the private sector and owner experience for industry groupings. Id. at 1044-1045.

The Court stated, to "be clear," that it did not hold that the defects in the availability and capacity analyses in these six disparity studies render the studies wholly unreliable for any purpose. Id. at 1045. The Court said that where the calculated disparity ratios are low enough, the Court does not foreclose the possibility that an inference of discrimination might still be permissible for some of the minority groups in some of the studied industries in some of the jurisdictions. Id. The Court recognized that a minority-owned firm's capacity and qualifications may themselves be affected by discrimination. Id. The Court held, however, that the defects it noted detracted dramatically from the probative value of the six studies, and in conjunction with their limited geographic coverage, rendered the studies insufficient to form the statistical core of the strong basis and evidence required to uphold the statute. Id.

**Geographic coverage.** The Court pointed out that whereas municipalities must necessarily identify discrimination in the immediate locality to justify a race-based program, the Court does not think that Congress needs to have had evidence before it of discrimination in all 50 states in order to justify the 1207 program. Id. The Court stressed, however, that in holding the six studies insufficient in this particular case, "we do not necessarily disapprove of decisions by other circuit courts that have relied, directly or indirectly, on municipal disparity studies to establish a federal compelling interest." 545 F.3d at 1046. The Court stated in particular, the Appendix relied on by the Ninth and Tenth Circuits in the context of certain race-conscious measures pertaining to federal highway construction, references the Urban Institute Report, which itself analyzed over 50 disparity studies and relied for its conclusions on over 30 of those studies, a far broader basis than the six studies provided in this case. Id.

**Anecdotal evidence.** The Court held that, given its holding regarding statistical evidence, it did not review the anecdotal evidence before Congress. The Court did point out, however, that there was not evidence presented of a single instance of alleged discrimination by the Department of Defense in the course of awarding a prime contract, or to a single instance of alleged discrimination by a private contractor identified as the recipient of a prime defense contract. 545 F.3d at 1049. The Court noted this lack of evidence in the context of the opinion in Croson that if a government has become a passive participant in a system of racial exclusion practiced by elements of the local construction industry, then that government may take affirmative steps to dismantle the exclusionary system. 545 F.3d at 1048, citing Croson, 488 U.S. at 492.

The Court pointed out that the Tenth Circuit in Concrete Works noted the City of Denver offered more than dollar amounts to link its spending to private discrimination, but instead provided testimony from minority business owners that general contractors who use them in city construction projects refuse to use them on private projects, with the result that Denver had paid tax dollars to support firms that discriminated against other firms because of their race, ethnicity and gender. 545 F.3d at 1049, quoting Concrete Works, 321 F.3d at 976-977.

In concluding, the Court stated that it stressed its holding was grounded in the particular items of evidence offered by the Department of Defense, and "should not be construed as stating blanket rules, for example about the reliability of disparity studies. As the Fifth Circuit has explained, there is no 'precise mathematical formula to assess the quantum of evidence that rises to the Croson 'strong basis in evidence' benchmark.'" 545 F.3d at 1049, quoting W.H. Scott Constr. Co., 199 F.3d at 218 n.11.

**Narrowly tailoring.** The Court only made two observations about narrowly tailoring, because it held that Congress lacked the evidentiary predicate for a compelling interest. First, it noted that the 1207 Program was flexible in application, limited in duration, and that it did not unduly impact on the rights of third parties. 545 F.3d at 1049. Second, the Court held that the absence of strongly probative statistical evidence makes it impossible to evaluate at least one of the other narrowly tailoring factors. Without solid benchmarks for the minority groups covered by the Section 1207, the Court said it could not determine whether the five percent goal is reasonably related to the capacity of firms owned by members of those minority groups – i.e., whether that goal is comparable to the share of contracts minorities would receive in the absence of discrimination." 545 F.3d at 1049-1050.

## B. Dynalantic Corp. v. United States Dept. of Defense, 503 F.Supp. 2d 262 (D.D.C. 2007)

Dynalantic Corp. involves a recent challenge to the Department of Defense's (DOD) utilization of the Small Business Administration's ("S.B.A.") 8(a) Business Development Program (the "8(a) Program"). In its Order of August 23, 2007, the district court denied both parties' motions for summary judgment because there was no information in the record regarding the evidence before Congress supporting its 2006 reauthorization of the program in question; the court directed the parties to propose future proceedings to supplement the record. 503 F. Supp. 2d 262, 263 (D.D.C. 2007).

The court first explained that the 8(a) Program sets a goal that no less than 5 percent of total prime federal contract and subcontract awards for each fiscal year be awarded to socially and economically disadvantaged individuals. Id. Each federal government agency is required to establish its own goal for contracting but the goals are not mandatory and there is no sanction for failing to meet the goal. Upon application and admission into the 8(a) Program, small businesses owned and controlled by disadvantaged individuals are eligible to receive technological, financial, and practical assistance, and support through preferential award of government contracts. For the past few years, the 8(a) Program was the primary preferential treatment program the DOD used to meet its 5 percent goal. Id. at 264.

This case arose from a Navy contract that the DOD decided to award exclusively through the 8(a) Program. The plaintiff owned a small company that would have bid on the contract but for the fact it was not a participant in the 8(a) Program. After multiple judicial proceedings the D.C. Circuit dismissed the plaintiff's action for lack of standing but granted the plaintiff's motion to enjoin the contract procurement pending the appeal of the dismissal order. The Navy cancelled the proposed procurement but the D.C. Circuit allowed the plaintiff to circumvent the mootness argument by amending its pleadings to raise a facial challenge to the 8(a) program as administered by the SBA and utilized by the DOD. The D.C. Circuit held the plaintiff had standing because of the plaintiff's inability to compete for DOD contracts reserved to 8(a) firms, the injury was traceable to the race-conscious component of the 8(a) Program, and the plaintiff's injury was imminent due to the likelihood the government would in the future try to procure another contract under the 8(a) Program for which the plaintiff was ready, willing, and able to bid. Id. at 264-65.

On remand, the plaintiff amended its complaint to challenge the constitutionality of the 8(a) Program and sought an injunction to prevent the military from awarding any contract for military simulators based upon the race of the contractors. Id. at 265. The district court first held that the plaintiff's complaint could be read only as a challenge to the DOD's implementation of the 8(a) Program [pursuant to 10 U.S.C. § 2323] as opposed to a challenge to the program as a whole. Id. at 266. The parties agreed that the 8(a) Program uses race-conscious criteria so the district court concluded it must be analyzed under the strict scrutiny constitutional standard. The court found that in order to evaluate the government's proffered "compelling government interest," the court must consider the evidence that Congress considered at the point of authorization or reauthorization to ensure that it had a strong basis in evidence of discrimination requiring remedial action. The court cited to Western States Paving in support of this proposition. Id. The court concluded that because the DOD program was reauthorized in 2006, the court must consider the evidence before Congress in 2006.

The court cited to the recent Rothe decision as demonstrating that Congress considered significant evidentiary materials in its reauthorization of the DOD program in 2006, including six recently published disparity studies. The court held that because the record before it in the present case did not contain information regarding this 2006 evidence before Congress, it could not rule on the parties' motions for summary judgment. The court denied both motions and directed the parties to propose future proceedings in order to supplement the record. Id. at 267.

## C. Federal Procurement After "Adarand" (USCCR Report September 2005)

In September of 2005, the United States Commission on Civil Rights (the "Commission") issued its report entitled "Federal Procurement After Adarand" setting forth its findings pertaining to federal agencies' compliance with the constitutional standard enunciated in Adarand. United States Commission on Civil Rights: Federal Procurement After Adarand (Sept. 2005), available at http://www.usccr.gov, citing Adarand, 515 U.S. at 237-38. The USCCR Report is not the same as a court decision and is not legally controlling or binding authority on the Consortium in their implementation of the Federal DBE Program. The Report and its recommendations may only be considered as having some instructive or persuasive effect by a court. See Rothe Development Corp. v. U.S. Department of Defense, 499 F.Supp. 2d 775, 864-65 (W.D. Tex. August 10, 2007) (See discussion of Rothe above at Section V. AI).

The following is a brief summary of the report.

In 1995, the United States Supreme Court decided Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995), which set forth the constitutional standard for evaluating race-conscious programs in federal contracting. The Commission states in its report that the court in Adarand held that racial classifications imposed by federal, state and local governments are subject to strict scrutiny and the burden is upon the government entity to show that the racial classification is the least restrictive way to serve a "compelling public interest;" the government program must be narrowly tailored to meet that interest. The court held that narrow tailoring requires, among other requirements, that "agencies must first consider race-neutral alternatives before using race conscious measures." [p. ix]

**Scope and methodology of the Commission's report.** The purpose of the Commission's study was to examine the race-neutral programs and strategies implemented by agencies to meet the requirements set forth in Adarand. Accordingly, the study considered the following questions:

- Do agencies seriously consider workable race-neutral alternatives, as required by Adarand?
- Do agencies sufficiently promote and participate in race-neutral practices such as mentor-protégé programs, outreach, and financial and technical assistance?
- Do agencies employ and disclose to each other specific best practices for consideration of race-neutral alternatives?
- How do agencies measure the effects of race-neutral programs on federal contracting?
- What race-neutral mechanisms exist to ensure government contracting is not discriminatory?

The Commission's staff conducted background research, reviewing government documents, federal procurement and economic data, federal contracting literature, and pertinent statutes, regulations and court decisions. The Commission selected seven agencies to study in depth and submitted interrogatories to assess the agencies' procurement methods. The agencies selected for evaluation procure relatively large amounts of goods and services, have high numbers of contracts with small businesses, SDBs, or HUBZone firms, or play a significant support or enforcement role: the Small Business Administration (SBA), and the Departments of Defense (DOD), Transportation (DOT), Education (DOEd), Energy (DOEn), Housing and Urban Development (HUD), and state (DOS).

The report did not evaluate existing disparity studies or assess the validity of data suggesting the persistence of discrimination. It also did not seek to identify whether, or which, aspects of the contracting process disparately affect minority-owned firms.

**Findings and recommendations.** The Commission concluded that "among other requirements, agencies must consider race-neutral strategies before adopting any that allow eligibility based, even in part, on race." [p. ix] The Commission further found "that federal agencies have not complied with their constitutional obligation, according to the Supreme Court, to narrowly tailor programs that use racial classifications by considering race-neutral alternatives to redress discrimination." [p. ix]

The Commission found that "agencies have largely failed to apply the Supreme Court's requirements, or [the U.S. Department of Justice's ("DOJ")] guidelines, to their contracting programs." [p. 70] The Commission found that agencies "have not seriously considered race-neutral alternatives, relying instead on SBA-run programs, without developing new initiatives or properly assessing the results of existing programs." [p. 70]

The Commission identified four elements that underlie "serious consideration" of race-neutral efforts, ensure an inclusive and fair race-neutral system, and tailor race-conscious programs to meet a documented need: "Element 1: Standards – Agencies must develop policy, procedures, and statistical standards for evaluating race-neutral alternatives; Element 2: Implementation – Agencies must develop or identify a wide range of race-neutral approaches, rather than relying on only one or two generic government-wide programs; Element 3: Evaluation – Agencies must measure the effectiveness of their chosen procurement strategies based on established empirical standards and benchmarks; Element 4: Communication – Agencies should communicate and coordinate race-neutral practices to ensure maximum efficiency and consistency government-wide." [p. xi]

The Commission found that "despite the requirements that Adarand imposed, federal agencies fail to consider race-neutral alternatives in the manner required by the Supreme Court's decision." [p. xiii] The Commission also concluded that "[a]gencies engage in few race-neutral strategies designed to make federal contracting more inclusive, but do not exert the effort associated with serious consideration that the Equal Protection Clause requires. Moreover, they do not integrate race-neutral strategies into a comprehensive procurement approach for small and disadvantaged businesses." [p. xiii]

**Serious consideration [P. 71].** Finding: Most agencies could not demonstrate that they consider race-neutral alternatives before resorting to race-conscious programs. Due to the lack of specific guidance from the DOJ, "agencies appear to give little thought to their legal obligations and disagree both about what the law requires and about the legal ramifications of their actions."

Recommendation: Agencies must adopt and follow guidelines to ensure consideration of race-neutral alternatives, which system could include: (1) identifying and evaluating a wide range of alternatives; (2) articulating the underlying facts that demonstrate whether race-neutral plans work; (3) collecting empirical research to evaluate success; (4) ensuring such assessments are based on current, competent and comprehensive data; (5) periodically reviewing race conscious plans to determine their continuing need; and (6) establishing causal relationships before concluding that a race-neutral plan is ineffective. Best practices could include: (1) statistical standards by which agencies would determine when to abandon race race-conscious efforts; (2) ongoing data collection, including racial and ethnic

information, by which agencies would assess effectiveness; and (3) policies for reviewing what constitutes disadvantaged status and the continued necessity for strategies to increase inclusiveness.

**Antidiscrimination policy and enforcement [P. 72].** Finding: The federal government lacks an appropriate framework for enforcing nondiscrimination in procurement. Limited causes of action are available to contractors and subcontractors, but the most accessible mechanisms are restricted to procedural complaints about bidding processes.

Recommendation: The enactment of legislation expressly prohibiting discrimination based on race, color, religion, sex, national origin, age, and disability, in federal contracting and procurement. Such legislation should include protections for both contractors and subcontractors and establish clear sanctions, remedies and compliance standards. Enforcement authority should be delegated to each agency with contracting capabilities.

Finding: Most agencies do not have policies or procedures to prevent discrimination in contracting. Generally, agencies are either unaware of or confused about whether federal law protects government contractors from discrimination.

Recommendation: The facilitation of agency development and implementation of civil rights enforcement policies for contracting. Agencies must establish strong enforcement systems to provide individuals a means to file and resolve complaints of discriminatory conduct. Agencies must also adopt clear compliance review standards and delegate authority for these functions to a specific, high-level component. Once agencies adopt nondiscrimination policies, they should conduct regular compliance reviews of prime and other large contract recipients, such as state and local agencies. Agencies should widely publicize complaint procedures, include them with bid solicitations, and codify them in acquisition regulations. Civil rights personnel in each agency should work with procurement officers to ensure that contractors understand their rights and responsibilities and implement additional policies upon legislative action.

Finding: Agencies generally employ systems for reviewing compliance with subcontracting goals made at the bidding stage, but do not establish norms for the number of reviews they will conduct, nor the frequency with which they will do so.

Recommendation: Good faith effort policies should be rooted in race-neutral outreach. Agencies should set standards for and carry out regular on-site audits and formal compliance reviews of SDB subcontracting plans to make determinations of contractors' good faith efforts to achieve established goals. Agencies should develop and disseminate clear regulations for what constitutes a good faith effort, specific to individual procurement goals and procedures. Agencies should also require that all prime contractors be subject to audits, and require prime contractors to demonstrate all measures taken to ensure equal opportunity for SDBs to compete, paying particular attention to contractors that have not achieved goals expressed in their offers.

**Ongoing review [P. 73].** Finding: Narrow tailoring requires regular review of race-conscious programs to determine their continued necessity and to ensure that they are focused enough to serve their intended purpose. However, no agency reported policies, procedures, or statistical standards for when to use race-conscious instead of race-neutral strategies, nor had agencies established procedures to reassess presumptions of disadvantage.

Recommendation: Agencies must engage in regular, systematic reviews (perhaps biennial) of race-conscious programs, including those that presume race-based disadvantage. They should develop and document clear policies, standards and justifications for when race-conscious programs are in effect. Agencies should develop and implement standards for the quality of data they collect and use to analyze race-conscious and race-neutral programs and apply these criteria when deciding effectiveness. Agencies should also evaluate whether race-neutral alternatives could reasonably generate the same or similar outcomes, and should implement such alternatives whenever possible.

**Data and measurement [P. 73-75].** Finding: Agencies have neither conducted race disparity studies nor collected empirical data to assess the effects of procurement programs on minority-owned firms.

Recommendation: Agencies should conduct regular benchmark studies which should be tailored to each agency's specific contracting needs; and the results of the studies should be used in setting procurement goals.

Finding: The current procurement data does not evaluate the effectiveness or continuing need for race-neutral and/or race-conscious programs.

Recommendation: A task force should determine what data is necessary to implement narrow tailoring and assess whether (1) race-conscious programs are still necessary, and (2) the extent to which race-neutral strategies are effective as an alternative to race-conscious programs.

Finding: Agencies do not assess the effectiveness of individual race-neutral strategies (e.g. whether contract unbundling is a successful race-neutral strategy).

Recommendation: Agencies should measure the success of race-neutral strategies independently so they can determine viability as alternatives to race-conscious measures (e.g. agencies could track the number and dollar value of contracts broken apart, firms to which smaller contracts are awarded, and the effect of such efforts on traditionally excluded firms).

**Communication and collaboration [P. 75].** Finding: Agencies do not communicate effectively with each other about efforts to strengthen procurement practices (e.g. there is no exchange of race-neutral best practices).

Recommendation: Agencies should engage in regular meetings with each other to share information and best practices, coordinate outreach, and develop measurement strategies.

**Outreach [P. 76].** Finding: Even though agencies engage in outreach efforts, there is little evidence that their efforts to reach small and disadvantaged businesses are successful. They do not produce planning or reporting documents on outreach activities, nor do they apply methods for tracking activities, expenditures, or the number and types of beneficiaries.

Recommendation: Widely broadcast information on the Internet and in popular media is only one of several steps necessary for a comprehensive and effective outreach program. Agencies can use a variety of formats – conferences, meetings, forums, targeted media, Internet, printed materials, ad campaigns, and public service announcements – to reach appropriate audiences. In addition, agencies should capitalize on technological capabilities, such as listservs, text messaging, audio subscription services, and new technologies associated with portable listening devices, to circulate information

about contracting opportunities. Agencies should include outreach in budget and planning documents, establish goals for conducting outreach activities, track the events and diversity of the audience, and train staff in outreach strategies and skills.

**Conclusion.** The Commission found that ten years after the court's Adarand decision, federal agencies have largely failed to narrowly tailor their reliance on race-conscious programs and have failed to seriously consider race-neutral decisions that would effectively redress discrimination. Although some agencies employ some race-neutral strategies, the agencies fail "to engage in the basic activities that are the hallmarks of serious consideration," including program evaluation, outcomes measurement, reliable empirical research and data collection, and periodic review.

The Commission found that most federal agencies have not implemented "even the most basic race-neutral strategy to ensure equal access, i.e., the development, dissemination, and enforcement of clear, effective antidiscrimination policies. Significantly, most agencies do not provide clear recourse for contractors who are victims of discrimination or guidelines for enforcement."

One Commission member, Michael Yaki, filed an extensive Dissenting Statement to the Report. [pp. 79-170]. This Dissenting Statement by Commissioner Yaki was referred to and discussed by the district court in Rothe Development Corp. v. US DOD, 499 F.Supp.2d 775, 864-65 (W.D. Tex. August 10, 2007) (see discussion of Rothe above at Section V, A1). In his dissent, Commissioner Yaki criticized the Majority Opinion, including noting that his statistical data was "*deleted*" from the original version of the draft Majority Opinion that was received by all Commissioners. The district court in Rothe considered the data discussed by Yaki.

# VI. Decisions Involving State or Local Government MBE/WBE Programs That May Impact the Consortium Agencies' DBE Programs

## A. Decisions in the Ninth Circuit

### 1. Monterey Mechanical v. Wilson, 125 F.3d 702 (9th Cir. 1997)

This case is instructive in that the Ninth Circuit analyzed and held invalid the enforcement of a MBE/WBE program. Although the program at issue utilized the term "goals" as opposed to "quotas," the Ninth Circuit rejected such a distinction, holding "[t]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." The case also is instructive because it found the use of "goals" and the application of "good faith efforts" in connection with achieving goals to trigger strict scrutiny.

Plaintiff Monterey Mechanical Co. submitted the low bid for a construction project for the California Polytechnic State University (the "University"). Monterey Mechanical v. Wilson, 125 F.3d 702, 704 (9th Cir. 1994). The University rejected the plaintiff's bid because the plaintiff failed to comply with a state statute requiring prime contractors on such construction projects to subcontract 23 percent of the work to MBE/WBEs or, alternatively, demonstrate good faith outreach efforts. Id. The plaintiff conducted good faith outreach efforts but failed to provide the requisite documentation; the awardee prime contractor did not subcontract any portion of the work to MBE/WBEs but did include documentation of good faith outreach efforts. Id.

Importantly, the University did not conduct a disparity study, and instead argued that because "the 'goal requirements' of the scheme '[did] not involve racial or gender quotas, set-asides or preferences,'" the University did not need a disparity study. Id. at 705. The plaintiff protested the contract award and sued the University's trustees, and a number of other individuals (collectively the "defendants") alleging the state law was violative of the Equal Protection Clause. Id. The district court denied the plaintiff's motion for an interlocutory injunction and the plaintiff appealed to the Ninth Circuit Court of Appeals. Id.

The defendants first argued that the statute was constitutional because it treated all general contractors alike, by requiring all to comply with the MBE/WBE participation goals. Id. at 708. The court held, however, that a minority or women business enterprise could satisfy the participation goals by allocating the requisite percentage of work to itself. Id. at 709. The court held that contrary to the district court's finding, such a difference was not *de minimis*. Id.

The defendants also argued that the statute was not subject to strict scrutiny because the statute did not impose rigid quotas, but rather only required good faith outreach efforts. Id. at 710. The court rejected the argument finding that although the statute permitted awards to bidders who did not meet the percentage goals, "they are rigid in requiring precisely described and monitored efforts to attain those goals." Id. The court cited its own earlier precedent to hold that "the provisions are not immunized from scrutiny because they purport to establish goals rather than quotas … [T]he relevant question is not whether a statute requires the use of such measures, but whether it authorizes or encourages them." Id. at 710-11 (internal citations and quotations omitted). The court found that the statute encouraged set asides and cited Concrete Works of Colorado v. Denver, 36 F.3d 1512 (10th Cir. 1994), as analogous support for the proposition. Id. at 711.

The court found that the statute treated contractors differently based upon their race, ethnicity and gender, and although "worded in terms of goals and good faith, the statute imposes mandatory requirements with concreteness." Id. The court also noted that the statute may impose additional compliance expenses upon non-MBE/WBE firms who are required to make good faith outreach efforts (e.g. advertising) to MBE/WBE firms. Id. at 712.

The court then conducted strict scrutiny (race), and an intermediate scrutiny (gender) analyses. Id. at 712-13. The court found the University presented "no evidence" to justify the race- and gender-based classifications and thus did not consider additional issues of proof. Id. at 713. The court found that the statute was not narrowly tailored because the definition of "minority" was overbroad (e.g. inclusion of Aleuts). Id. at 714, citing Wygant v. Jackson Board of Education, 476 U.S. 267, 284, n. 13 (1986) and City of Richmond v. J.A. Croson, Co., 488 U.S. 469, 505-06 (1989). The court found "[a] broad program that sweeps in all minorities with a remedy that is in no way related to past harms cannot survive constitutional scrutiny." Id. at 714, citing Hopwood v. Stateof Texas, 78 F.3d 932, 951 (5th Cir. 1996). The court held that the statute violated the Equal Protection Clause.

### 2. Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991)

In Coral Construction Co. v. King County, 941 F.2d 910 (9th Cir. 1991), the Ninth Circuit examined the constitutionality of King County, Washington's minority and women business set-aside program in light of the standard set forth in City of Richmond v. J.A. Croson Co. The court held that although the County presented ample anecdotal evidence of disparate treatment of MBE contractors and subcontractors, the total absence of pre-program enactment statistical evidence, was

problematic to the compelling government interest component of the strict scrutiny analysis. The court remanded to the district court for a determination of whether the post-program enactment studies constituted a sufficient compelling government interest. Per the narrow tailoring prong, the court found that although the program included race-neutral alternative measures and was flexible (i.e. included a waiver provision), the over breadth of the program to include MBEs outside of King County was fatal to the narrow tailoring analysis. The court also remanded on the issue of whether the plaintiffs were entitled to damages under 42 U.S.C. §§ 1981 and 1983, and in particular to determine whether evidence of causation existed. With respect to the WBE program, the court held the plaintiff had standing to challenge the program, and applying the intermediate scrutiny analysis, held the WBE program survived the facial challenge.

#### 3. Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity ("AGCC"), 950 F.2d 1401 (9th Cir. 1991)

In Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equity ("AGCC"), the Ninth Circuit Court of Appeals denied plaintiffs request for preliminary injunction to enjoin enforcement of the city's bid preference program. 950 F.2d 1401 (9th Cir. 1991). Although an older case, AGCC is instructive as to the analysis conducted by the Ninth Circuit. The court discussed the utilization of statistical evidence and anecdotal evidence in the context of the strict scrutiny analysis. Id. at 1413-18.

### B. California State Court Decisions

#### 1. Coral Construction, Inc. v. City and County of San Francisco, 57 Cal.Rptr.3d 781 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007)

This case involved a challenge to San Francisco's Minority / Women / Local Business Utilization Ordinance (the "Ordinance"), which implemented race- and gender-conscious remedies to ameliorate the effects of past discrimination in City contracting. 57 Cal.Rptr.3d 781, 783 (1st Dist. 2007), review granted 167 P.3d 25 (Cal. Aug. 22, 2007).[73] Subsequent to the adoption of Proposition 209 (§ 31 of the California Constitution), two companies challenged the validity of the Ordinance on the basis that certain portions violated Section 31. Id. On cross-motions for summary judgment, the trial court struck down the Ordinance as violative of Section 31 and rejected the City of San Francisco's (the "City") three arguments: (1) that Section 31 is preempted by the International Convention on the Elimination of All Forms of Racial Discrimination (Race Convention), a human rights treaty ratified by Congress in 1994; (2) that Section 31 offends the Hunter / Seattle political restructuring arm of equal protection jurisprudence; and (3) pervasive past discrimination in public contracting converted the Ordinance to a remedial measure required by the Equal Protection Clause which then preempted Section 31. Id. at 783-84; see Hunter v. Erickson, 393 U.S. 385(1969) ("Hunter") and Washington v. Seattle School Dist. No. 1, 458 U.S. 457 (1982) ("Seattle").

The City appealed and the Court of Appeals affirmed in part, and remanded in part, holding: (1) the Race Convention did not preempt Section 31; and (2) Section 31 did not offend the Hunter / Seattle political restructuring arm. Id. at 784. The Court of Appeals held the Ordinance was not required to obtain federal funds, but remanded to the trial court on the issue of whether the Ordinance was

[73] Pursuant to California Court Rule 8.1105(e), an opinion is no longer considered published if the California Supreme Court grants review.

mandated by the federal Constitution "as a narrowly tailored remedial program to remedy ongoing, pervasive discrimination in public contracting." Id.

The City filed a Petition for Review to the California Supreme Court, and the court granted review. Coral Constr., Inc. v. City and County of San Francisco, 167 P.3d 25 (2007) (discussed infra). The following is a summary of the Court of Appeals decision currently on appeal.

The Ordinance challenged was first enacted in 1984 and was subject to multiple legal challenges and went through several changes. The version of the Ordinance challenged in this case, enacted in 1998 and reauthorized in 2003, provided for a bid discount program requiring City departments to give specified discounts to contract bids submitted by certified MBEs and WBEs. Id. at 784-86. The Ordinance also required bidders on certain prime contracts to document their good-faith efforts to utilize MBE and WBE subcontractors. Id. If a bidder planned to use MBE or WBE subcontractors, they were not required to document their good-faith efforts. Id.

In support of the 2003 reauthorization of the 1998 Ordinance, the City conducted public hearings and investigation, including a disparity analysis by the City's Human Rights Commission ("HRC"). Id. at 786. The court stated that the disparity analysis showed continued statistically significant underutilization of racial, ethnic, and non-minority women-owned businesses as prime contractors on City projects as well utilization of such businesses at the subcontracting level. Id. The HRC also released a report of anecdotal information regarding discrimination and they held public hearings at which 134 individuals testified. Id. The record also included reported instances of prime contractors circumventing compliance with the Ordinance either by not actually employing the MBE/WBE firms listed, or terminating their employment when their percentage of MBE/WBE compliance was complete. Id. at 787. The City's Board of Supervisors made legislative findings and reauthorized the Ordinance in 2003 to "remedy the specifically identified City contracting practices and conditions in the Community and industries that cause the exclusion or reduction of contracting opportunities for minority- and women-owned businesses in City prime and subcontracting programs." Id.

The plaintiff companies challenged the Ordinance and on cross-motions for summary judgment, the trial court granted the plaintiff's motion and entered a permanent prohibitory injunction against the City. Id.

First, the City argued that its program fell within the federal funding exception to Section 31. The Court of Appeals rejected that argument, holding that while certain federal regulations required affirmative action in certain situations, the federal regulations (49 CFR Part 26) did not require that such affirmative action be race-conscious. Id. at 789. The court noted that with respect to the federal Civil Rights Act, the Act contained an express provision indicating Congress did not intend to occupy the field or preempt consistent state legislation and the court found that Section 31 was consistent with the federal Civil Rights Act. Id. at 790. The court held the City had the burden of showing "substantial evidence that it will lose federal funding if it does not use race-based measures to minimize race-based discrimination," and that the City failed to meet that burden. Id.

Second, the court held that the Race Convention did not preempt Section 31. In considering this issue, the court cited the conflicting opinions by the Commission on the Elimination of Racial Discrimination (the "CERD") and the United States State Department. The CERD interpreted the Race Convention as requiring race-based remedies in response to persistent inequities while the State

Department interpreted it as permitting, but not requiring, affirmative action measures. The court found the State Department's interpretation entitled to great deference and so held.

Third, the court rejected the City's argument based on the Hunter / Seattle doctrine, that Section 31 could not be applied to prevent the City from enacting remedial legislation to help minorities and women. The court explained the Hunter / Seattle doctrine "invokes the constitutional guarantee of equal protection to invalidate certain facially neutral enactments that explicitly alter the established political process with respect to a racial issue, thereby making it more onerous for racial minorities to achieve favorable legislation with respect to that issue." Id. at 794. The court found that a challenger invoking the Hunter / Seattle doctrine must show that a "particular law: (1) employs a racial classification or has the purpose of adversely impacting racial minorities, and (2) alters the political landscape on a racial matter in a manner that places a special burden on racial minorities." Id. at 795. The court cited later case law for the proposition that the "repeal or modification of desegregation or antidiscrimination laws, without more, never has been viewed as embodying a presumptively invalid racial classification … However, where the purpose of repealing legislation is to disadvantage a racial minority, the repeal is unconstitutional." Id. (internal citations omitted).

The court concluded that the enactment of Section 31 did not run afoul of the Hunter / Seattle doctrine. The court found that a neutral law that addresses a race-related matter does not necessarily embody a discriminatory racial classification. The court found that Section 31's dual prohibition against discrimination and preferential treatment, coupled with its savings clause allowing it to be implemented to the maximum extent allowed by federal law and the U.S. Constitution, rendered it a neutral law. The court also found that Section 31 did not have a racially discriminatory purpose, but, rather, was a "substantive policy enactment *barring* race-and gender-based discrimination and preferences in public employment, contracting and education." Id. at 798 (emphasis in original). The court concluded that Section 31 "does not impermissibly restructure the political process in a manner that burdens the equal protection rights of racial and ethnic minorities and women." Id. at 800.

The court, however, found the trial court erred in failing to consider whether the Equal Protection Clause would require the City to implement a race- and gender-conscious program in light of its assertions of pervasive past and ongoing discrimination. Id. at 800-01. The court termed this as the affirmative constitutional duty to desegregate, or "'disestablish' the results of intentional discrimination." Id. at 803. The court concluded that if the City was found to have engaged in intentional discrimination in public contracting such to necessitate a race- and gender-conscious remedial program, federal law would prevail over Section 31. The court remanded to the trial court to determine whether the City has presented such an extreme case of intentional discrimination in public contracting to require a narrowly tailored remedial program.

Justice Rivera filed another opinion, concurring and dissenting in part. Justice Rivera asserted Section 31 is subject to a Hunter / Seattle analysis and should be remanded on that basis.

Following the decision by the Court of Appeals, the plaintiffs petitioned the California Supreme Court to review the Court of Appeals' holding that the trial court erred in failing to determine whether the Ordinance was a narrowly tailored remedial program to remedy ongoing, pervasive discrimination in public contracting. See City's Opening Br. on the Merits of Issues Two and Three, available at 2007 WL 4208740 (Oct. 24, 2007). The City answered the petition and requested the California Supreme Court to also review the Court of Appeals' holdings regarding the Hunter /

Seattle doctrine and the Race Convention. The California Supreme Court granted review on August 22, 2007. Id.

The following three issues are pending before the court:

1. Did the Court of Appeals properly remand the case to the trial court to determine in the first instance whether the ordinance was required by the federal equal protection clause as a narrowly tailored remedial program to remedy ongoing, pervasive discrimination in public contracting?

2. Does an ordinance that provides certain advantages to minority- and female-owned business enterprises with respect to the award of city contracts fall within an exception to Section 31 for actions required of a local government entity to maintain eligibility for federal funds under the federal Civil Rights Act (42 U.S.C. § 2000d)?

3. Does Article I, Section 31 of the California Constitution, which prohibits government entities from discrimination or preference on the basis of race, sex, or color in public contracting, improperly disadvantage minority groups and violate equal protection principles by making it more difficult to enact legislation on their behalf? Id.

### 2. C & C Construction, Inc. v. Sacramento Municipal Utility District ("SMUD"), 122 Cal. App. 4th 284 (2004)

Plaintiff C & C Construction filed a complaint for declaratory and injunctive relief against the Sacramento Municipal Utility District ("SMUD"), alleging SMUD's 1998 Equal Business Opportunity Program violated Section 31 of the California Constitution (Proposition 209). 122 Cal. App. 4th 284, 291 (2004). SMUD argued that although its program utilized race-based "participation goals" and "evaluation credits" in public contracting, its program fell within the exception set forth in Section 31(e) which states: "Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State." Id. The case came before the Court of Appeals on the trial court's grant of the plaintiff's motion for summary judgment. The Court of Appeals affirmed, holding SMUD "failed to proffer substantial evidence that its race-based discrimination is necessary to maintain federal funding." Id.

SMUD first enacted the challenged program in 1993 after conducting a disparity study. The court found that at the request of SMUD, the disparity study did not incorporate examination of race-neutral remedies that were in place or that might be used to increase opportunities for MBE/WBEs. Id. at 292. The court also found that SMUD did not wish to have the study make proposals or recommendations for changes or improvements in its existing race-neutral proposals. Id. at 292. The disparity study concluded that there were significant statistical disparities in the number of minority businesses awarded contracts when analyzed against the amount of contract dollars awarded. Id. SMUD made a finding that race-neutral and other outreach efforts were not working and determined, based upon the disparity study, to implement race-based remedial action to remedy the effects of past discrimination against certain minority groups. SMUD implemented an affirmative action program setting race-based goals for utilization of minority-owned businesses. Id. at 293.

In November of 1996, the California electorate approved Proposition 209 (Section 31 of the California Constitution). In 1998, the SMUD conducted another disparity study in order to update its data. Id. at 294. The 1998 disparity study revealed some improvement in utilization of minority-owned businesses but found a statistically significant disparity continued to exist among certain subsets of minority contractors in certain areas of SMUD public contracting. Id. Based on the 1998 disparity study, SMUD implemented a revised affirmative action program that (1) provided for a 5 percent price advantage for African American or Hispanic American contractors on certain public contracts; (2) extended evaluation credits to all prime contractors obtaining the 8 percent or more subcontractor goal for utilization of Asian Pacific American or African American subcontractors; (3) had a requirement of outreach efforts by prime contractors to minority-owned businesses on certain public contracts over a certain dollar amount; and (4) had a requirement of documentation of good faith efforts by prime contractors to utilize minority-owned businesses on certain public contracts over a certain dollar amount (Asian Pacific American or African American). Id. at 294-95. Under the program, prime contractors that did not meet the subcontracting goals and the good faith efforts provisions were deemed non-responsive and their bids were rejected. Id. at 295. The program did not cite any federal law or regulation nor did it assert that the program was needed to meet federal requirements. Id. The SMUD Board did make findings, however, related to the receipt of federal funding on certain delineated public projects. Id. at 296.

The plaintiff did not meet the definition of a "Minority-Owned Business Enterprise." The plaintiff brought suit claiming SMUD's 1998 affirmative action program violated Section 31 because it granted preferential treatment and discriminated on the basis of race. Id. at 297. On cross-motions for summary judgment, SMUD "conceded" that its affirmative action program violated the general provisions of Section 31(a) but argued that its program fell within the exemption set forth in Section 31(e). Id. The trial court rejected SMUD's position because it failed to produce any "evidence of express federal contractual conditions, laws, or regulations that made approval of federal funds contingent upon race-based discrimination. Nor did SMUD offer federal legal authority to support the conclusion that failure to use the affirmative action program would result in the loss of federal funds because federal agencies may not terminate funding without an administrative hearing and judicial review." Id. at 297. The trial court permanently enjoined SMUD from enforcing any portion of its affirmative action program to the extent that it purports to or does grant preferential treatment to any individual on the basis of race, sex, color, ethnicity, or national origin in public contracting. Id. at 297-98.

On appeal, the Court of Appeals considered only whether the affirmative action program fell within the federal funding exemption under Section 31(e). The Court of Appeals first held that while a state governmental agency need not obtain federal adjudication that race-based discrimination is necessary to maintain federal funding, it must have substantial evidence that it will lose federal funding if it does not use race-based remedial measures, and any such race-based remedial measures must be narrowly tailored to minimize race-based discrimination. Id. at 298. The Court of Appeals also held that the legislative interpretation of the word "discrimination" must yield to the California Supreme Court's interpretation of the same in Hi- Voltage Wire Works, Inc. v. City of San Jose, 24 Cal. 4th 537 (2000) in which the supreme court held the word "discriminate" as used in Section 31 must be interpreted according to its plain meaning. Id.

SMUD argued that the race-based provisions in its affirmative action program were required by federal regulations promulgated by the Departments of Energy, Defense and Transportation. The Court of Appeals examined the cited regulations and determined that while some of them may require affirmative action to remedy the effects of identified past discrimination, none of the cited regulations required race-based affirmative action; rather, most expressly contemplated race-neutral affirmative action. Id. at 306-09. The Court of Appeals also rejected SMUD's argument that its program was necessary to certify that it was in compliance with federal regulations and thus maintain federal funding, because SMUD failed to identify any federal law or regulation that in fact required race-based affirmative action. On these bases, the Court of Appeals affirmed the grant of summary judgment in favor of the plaintiff.

Justice Raye filed a concurring opinion based on his finding there was no evidence that SMUD would lose federal funding. Acting Presiding Justice Blease filed a dissenting opinion concluding that federal DOT regulations required SMUD to implement race-based affirmative action.

### 3. Connerly v. State Personnel Board, 92 Cal. App. 4th 16 (2001)

In Connerly v. State Personnel Board, the Governor of California and a taxpayer challenged the constitutionality of several state affirmative action programs as in violation of Proposition 209 and Equal Protection. The court found that Proposition 209 overlaps with the principles of equal protection, however, "[t]o the extent the federal Constitution would permit, but not require, the State to grant preferential treatment to suspect classes, Proposition 209 precludes such action." Id. at 42. The court held that the affirmative action programs were invalid, but permitted certain outreach programs not targeted to MBE/WBEs and the monitoring, collecting, and reporting of data regarding MBE/WBE participation. The court stated:

> It can be seen that Proposition 209 overlaps, but is not synonymous with, the principles of equal protection that we have described in part II. A., *ante*. Under equal protection principles, all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny. It can be seen that Proposition 209 overlaps, but is not synonymous with, the principles of equal protection that we have described in part II. A., *ante*. Under equal protection principles, all state actions that rely upon suspect classifications must be tested under strict scrutiny, but those actions which can meet the rigid strict scrutiny test are constitutionally permissible. Proposition 209, on the other hand, prohibits discrimination against or preferential treatment to individuals or groups regardless of whether the governmental action could be justified under strict scrutiny.

Id. at 42.

The Court of Appeals held that "under the equal protection guarantee of California's Constitution, gender is a suspect classification subject to strict scrutiny review." 92 Cal. App. 4th 16, 39 (2001), citing Koire v. Metro Car Wash, 707 P.2d 195 (Cal. 1985). The court quoted Hi-Voltage Wire Works, Inc. v. City of San Jose, regarding the constitutionality of various outreach measures. The court held that outreach or recruitment efforts designed to "broaden the pool of potential applicants without reliance on an impermissible race or gender classification" are not constitutionally forbidden. Id. at 46. The court further held monitoring programs that collect and report data concerning the participation of women and minorities in the governmental programs do not violate equal protection principles. Id. The court reasoned that "[a]ccurate and up-to-date information is the sine qua non of intelligent, appropriate legislative and administrative action." Id.

The plaintiffs challenged the statutory provision applicable to the state lottery. Id. at 47. The court found that the provision expressly incorporated racial, ethnic, and gender classifications into the statutory meaning of "socially and economically disadvantaged," and that individuals from certain race or ethnic backgrounds were presumed disadvantaged. Id. The court held that the absence of any identified past discrimination, the inclusion of groups without particularized consideration as to whether they suffered discrimination, the absence of any attempt to measure recovery by the extent of the injury, and the absence of any geographic or temporal limits to the provision, rendered it unconstitutional and invalid. Id. at 48.

The plaintiffs also challenged the statutory provision applicable to professional bond services. Id. at 49. The court found that the provision established MBE/WBE participation goals and racial and gender classifications. Id. at 50. The provision entitled MBE/WBEs to receive "special notice of the sale or intention to issue bonds." Id. at 51. This provision, according to the court, was in violation of Proposition 209's prohibition against the "selective dissemination of information." Id. The provision further required the awarding department to monitor its adherence to the MBE/WBE goals and to file annual reports stating the level of participation. Id. at 52. Although the defendants argued that there was no penalty for failing to meet the goals, the court held this unconstitutional. Id. The court noted that the provision required bidders to certify their awareness of the MBE/WBE goals and required them to make good faith efforts to achieve those goals. Id. The court noted that despite the lack of penalty for failure to comply, the "economic realities" of the provision "inevitably compel bidders to give preferences based on racial and gender classifications." Id. Since the court found no prior discrimination in the contracting for professional bond services and no showing that race- or gender-neutral remedies were considered, it held this provision unconstitutional. Id. at 53. The court, however, upheld as valid certain monitoring and reporting requirements as to the level of MBE/WBE participation as serving a compelling government need and not in violation of Proposition 209. Id.

With respect to the plaintiffs' challenge to the state civil service affirmative action employment provisions, the court held the provisions in violation of equal protection and Proposition 209. Id. The affirmative action program included goals and timetables to increase utilization regarding the employment of minorities and women. Id. at 54. In connection with plaintiff's challenge to the community college statutory provisions ("an affirmative action employment program"), the court found the program, which sought to have its work force "proportionately reflect the adult population of the state," to be "unquestionably, a preferential hiring scheme." Id. at 59. The court noted that the program contained "nothing about making inclusive outreach efforts to assure equal opportunity; instead it requires efforts to seek, hire, and promote minorities and women." Id. at 60. Therefore, the court held the program in violation of equal protection and Proposition 209.

Finally, the plaintiffs challenged certain state contracting requirements under the Public Contract Code. The court noted the MBE/WBE participation goal provisions were previously invalidated in Monterey Mechanical, but stated that the federal court in that case "did not address whether the reporting requirements in the statutory scheme may be severed and upheld." Id. at 62. In severing and upholding the reporting requirements as valid, the court stated that "the Legislature's right to obtain accurate and up-to-date information on matters of public concern cannot be disputed." Id. The court held that information concerning participation of MBE/WBEs "can serve a number of important and valid legislative purposes," including indicating the need for further inquiry to determine whether specific discrimination is occurring, aiding the Legislature in determining whether race- and gender-neutral remedies are needed, and showing that other inclusive outreach efforts are warranted. Id. at 63. The court held that "the reporting requirements of the statutory scheme applicable to state contracting can serve a legitimate interest separate from the substantive provisions of the scheme" and they can be "severed mechanically and grammatically" and "functionally" from the "invalid portions of the act." Id.

#### 4. High-Voltage Wire Works, Inc. v. City of San Jose, 24 Cal. 4th 537, 101 Cal. Rptr.2d 653, 12 P.3d 1068 (Cal. 2000)

In Hi-Voltage Wire Works, Inc. v. City of San Jose, the California Supreme Court held the City of San Jose's Nondiscrimination/Non-preferential Treatment Program Applicable to Construction Contracts in Excess of $50,000 (the "Program"), a goals oriented program requiring utilization of minority and women subcontractors or documentation of best efforts at utilization, violated Article I, Section 31 of the California Constitution as amended by Proposition 209. 12 P.3d 1068 (Cal. 2000).

The Program at issue was adopted after the passage of Proposition 209 and sought to clarify the City's earlier goals oriented program that was enacted after the City commissioned a disparity study in 1990 that reported a disparity as to the amount of contract dollars awarded to MBE subcontractors. The Program required contractors to fulfill an outreach or a participation requirement and applied to all contractors, including MBEs and WBEs and those not planning to subcontract out any portion of the contract. Hi-Voltage bid on a contract and intended to perform all of the work itself and not hire any subcontractors. It did not comply with the terms of the Program and was deemed a non-responsive bidder. Upon challenge to the Program, the trial court held the Program violated Article I, Section 31. The Court of Appeals affirmed.

In affirming the lower courts and holding the Program unconstitutional, the California Supreme Court looked specifically to Title VII of the Civil Rights Act ("Title VII") and found that Article I, Section 31 "closely parallels this provision in both language and purpose;" the court thus examined U.S. Supreme Court cases interpreting Title VII.

The court found the Supreme Court's decision in Steelworkers v. Weber, 443 U.S. 193 (1979) marked a substantial modification in the interpretation and application of Title VII. In Weber and its progeny, the Supreme Court "interpreted Title VII to permit race-conscious action whenever the job category in question is traditionally segregated." 12 P.3d at 1077 (internal quotations omitted). The court determined its own jurisprudence indicated a "fundamental shift from a staunch anti-discrimination jurisprudence to approval, sometimes endorsement, of remedial race- and sex-conscious government decisionmaking." Id. at 1081.

In 1996, voters approved Proposition 209, adding Section 31 to Article I of the California Constitution and providing as follows:

> (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

The court found the language of the amendment was clear and found nothing in the ballot arguments or legislative analysis to indicate "discriminate" or "preferential treatment" should have any special meaning. The court determined the intent of Proposition 209 was to "reinstitute the interpretation of the Civil Rights Act and equal protection that predated Weber." The court concluded the Program violated Proposition 209 inasmuch as the participation component is discriminatory against non-MBE/WBE's and the outreach component grants preferential treatment to MBE/WBE's. Id. at 1084. Specifically, the court found the outreach component "requires contractors to treat MBE/WBE subcontractors more advantageously by providing them notice of bidding opportunities, soliciting their participation, and negotiating for their services, none of which they must do for non-MBE's/WBE's." Id. at 1068. The court concluded that the fact prime contractors were compelled to contact MBE/WBEs violated Proposition 209. Id.

The court did note however that not all outreach efforts are unlawful; rather the court found "voters intended to preserve outreach efforts to disseminate information about public employment, education, and contracting not predicated on an impermissible classification." Id. at 1085. The court expressed no opinion regarding the scope of such efforts.

Finally, the court also found that federal law did not require a different result as the "federal courts have held Proposition 209 does not conflict with Titles VI, VII, or IX of the Civil Rights Act of 1964." Id. at 1088.

#### 5. Cornelius v. L.A. County Metro. Transp. Auth., 49 Cal App. 4th 1761 (1996)

The plaintiff engineer brought a suit to enjoin the Los Angeles County Metropolitan Transit Authority's ("MTA") implementation of the Federal DBE Program. The trial court held the plaintiff had standing and held the DBE Program did not pass constitutional muster. The court enjoined the MTA's implementation of the DBE Program. The Court of Appeals reversed, holding the plaintiff did not have standing to challenge the DBE Program.

As a recipient of federal transportation funds, the court found MTA implemented the Federal DBE Program requiring at that time that 10 percent of MTA contracts be awarded to DBEs and requiring that MTA establish goals for DBE participation on certain prime contracts. The plaintiff was an engineer who worked for a subcontracting firm, Wagner Construction. Wagner was the subcontractor on a bid submitted by PCL Construction Services, Inc. for an MTA project. Although PCL was the lowest bidder, PCL did not achieve the required DBE participation nor did it establish good faith efforts to meet the DBE participation goal; MTA accordingly awarded the contract to the next lowest bidder. PCL filed suit against MTA alleging the DBE Program was unconstitutional, but PCL dropped the lawsuit. The plaintiff engineer then filed suit alleging the same challenge. 49 Cal. App. 4th 1761, 1764-65 (1996).

The trial court ruled that the plaintiff had standing, that the DBE Program was unconstitutional, and enjoined the MTA from administering, enforcing, soliciting bids, or allocating any funds under the DBE Program. Id. at 1766. In particular, the court found the evidence of alleged discrimination to be inadequate. MTA appealed arguing the injunction would subject them to a loss of federal funding. The Court of Appeals reversed, holding the plaintiff did not have standing.

The Court of Appeals analyzed both asserted grounds for standing: first, as an individual directly injured by the DBE Program, and second, as a taxpayer. The Court of Appeals held that under Adarand, an individual contractor seeking forward looking relief must show "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." 49 Cal. App. 4th at 1768-69, citing Adarand. The Court of Appeals held the plaintiff satisfied the first element via his claim that the DBE Program violated the equal protection of the law. Id. at 1769. But the court found the plaintiff was unable to satisfy the second element – that, pursuant to Adarand, "sometime in the relatively near future [he] will bid on another government contract that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors." Id., citing Adarand. Specifically, the court found the plaintiff could not satisfy this requirement because he was not a licensed contractor and therefore unable as a matter of law to bid on MTA contracts and thus suffered no tangible injury. The court held that in order for "a party to show that the future use of the DBE criteria will cause an actual or imminent injury, the party must minimally show it has bid in the past and would continue to bid in the future." The court denied plaintiff's first assertion of standing because he failed to meet that standard.

With respect to his claim for taxpayer standing, the plaintiff alleged that his payment of state and local taxes, as well his payment of increased taxes caused by increased contract costs associated with the DBE Program, conferred standing. The court rejected his contention, narrowing the dispositive issue to whether the plaintiff's payment of state income taxes was sufficient to confer taxpayer standing. The court held it was not, based upon three factors: the tangential relationship of the taxes paid to the policy contested; the ramification of finding of standing; and policy considerations. Because the case came before the court on a motion for summary judgment, and the parties agreed there were no triable issues of material fact, the court reversed and rendered judgment in favor of MTA.

## C. Decisions in Other Circuits

### 1. Rapid Test Prods., Inc. v. Durham Sch. Servs., Inc., 460 F.3d 859 (7th Cir. 2006)

In Rapid Test Products, Inc. v. Durham School Services Inc., the Seventh Circuit Court of Appeals held that 42 U.S.C. § 1981 (the federal anti-discrimination law) did not provide an "entitlement" in disadvantaged businesses to receive contracts subject to set aside programs; rather, § 1981 provided a remedy for individuals who were subject to discrimination. 460 F.3d 859 (7th Cir. 2006).

Durham School Services, Inc. ("Durham"), a prime contractor, submitted a bid for and won a contract with an Illinois school district. The contract was subject to a set-aside program reserving some of the subcontracts for disadvantaged business enterprises (a race- and gender-conscious program). Prior to bidding, Durham negotiated with Rapid Test Products, Inc. ("Rapid Test"), made one payment to Rapid Test as an advance, and included Rapid Test in its final bid. Rapid Test believed it had received the subcontract. However, after the school district awarded the contract to Durham, Durham gave the subcontract to one of Rapid Test's competitor's, a business owned by an

Asian male. The school district agreed to the substitution. Rapid Test brought suit against Durham under 42 U.S.C. § 1981 alleging that Durham discriminated against it because Rapid's owner was a black woman.

The district court granted summary judgment in favor of Durham holding the parties' dealing had been too indefinite to create a contract. On appeal, the Seventh Circuit Court of Appeals stated that "§ 1981 establishes a rule against discrimination in contracting and does not create any entitlement to be the beneficiary of a contract reserved for firms owned by specified racial, sexual, ethnic, or religious groups. Arguments that a particular set-aside program is a lawful remedy for prior discrimination may or may not prevail if a potential subcontractor claims to have been excluded, but it is to victims of discrimination rather than frustrated beneficiaries that § 1981 assigns the right to litigate." If race or sex discrimination is the reason why Durham did not award the subcontract to Rapid Test, then § 1981 provides relief. Having failed to address this issue, the Seventh Circuit Court of Appeals remanded the case to the district court to determine whether Rapid Test had evidence to back up its claim that race and sex discrimination, rather than a nondiscriminatory reason such as inability to perform the services Durham wanted, accounted for Durham's decision to hire Rapid Test's competitor.

### 2. Jana-Rock Construction, Inc. v. New York State Dept. of Economic Development, 438 F.3d195 (2d Cir. 2006)

This recent case is instructive to the Consortium and the disparity study in connection with the determination of the groups that may be included in a MBE/WBE program, and the standard of analysis utilized to evaluate a local government's non-inclusion of certain groups. In this case, the Second Circuit Court of Appeals held racial classifications that are challenged as "under-inclusive" (i.e. those that exclude persons from a particular racial classification) are subject to a "rational basis" review, not strict scrutiny.

Plaintiff Luiere, the majority of shareholder of Jana-Rock Construction, Inc. ("Jana Rock") and the "son of a Spanish mother whose parents were born in Spain," challenged the constitutionality of the State of New York's definition of "Hispanic" under its local minority-owned business program. 438 F.3d 195, 199-200 (2d Cir. 2006). Under the U.S. Department of Transportation regulations, 49 C.F.R. § 26.5, "Hispanic Americans" are defined as "persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race." Id. at 201. Upon proper application, Jana-Rock was certified by the New York Department of Transportation as a Disadvantaged Business Enterprise ("DBE") under the federal regulations. Id.

However, unlike the federal regulations, the State of New York's local minority-owned business program included in its definition of minorities "Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race." The definition did not include all persons from, or descendants of persons from, Spain or Portugal. Id. Accordingly, Jana-Rock was denied MBE certification under the local program; Jana-Rock filed suit alleging a violation of the Equal Protection Clause. Id. at 202-03. The plaintiff conceded that the overall minority-owned business program satisfied the requisite strict scrutiny, but argued that the definition of "Hispanic" was fatally under-inclusive. Id. at 205.

The Second Circuit found that the narrow-tailoring prong of the strict scrutiny analysis "allows New York to identify which groups it is prepared to prove are in need of affirmative action without demonstrating that no other groups merit consideration for the program." Id. at 206. The court found that evaluating under-inclusiveness as an element of the strict scrutiny analysis was at odds with the United States Supreme Court decision in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) which required that affirmative action programs be no broader than necessary. Id. at 207-08. The court similarly rejected the argument that the state should mirror the federal definition of "Hispanic," finding that Congress has more leeway than the states to make broader classifications because Congress is making such classifications on the national level. Id. at 209.

The court opined – without deciding – that it may be impermissible for New York to simply adopt the "federal USDOT definition of Hispanic without at least making an independent assessment of discrimination against Hispanics of Spanish Origin in New York." Id. Additionally, finding that the plaintiff failed to point to any discriminatory purpose by New York in failing to include persons of Spanish or Portuguese descent, the court determined that the rational basis analysis was appropriate. Id. at 213.

The court held that the plaintiff failed the rational basis test for three reasons: (1) because it was not irrational nor did it display animus to exclude persons of Spanish and Portuguese descent from the definition of Hispanic; (2) because the fact the plaintiff could demonstrate evidence of discrimination that he personally had suffered did not render New York's decision to exclude persons of Spanish and Portuguese descent irrational; and (3) because the fact New York may have relied on census data including a small percentage of Hispanics of Spanish descent did not mean that it was irrational to conclude that Hispanics of Latin American origin were in greater need of remedial legislation. Id. at 213-14. Thus, the Second Circuit affirmed the conclusion that New York had a rational basis for its definition to not include persons of Spanish and Portuguese descent, and thus affirmed the district court decision upholding the constitutionality of the challenged definition.

### 3. Virdi v. Dekalb County School District, 135 Fed. Appx. 262, 2005 WL 138942 (11th Cir. 2005) (unpublished opinion)

Although it is an unpublished opinion, Virdi v. DeKalb County School District is a recent Eleventh Circuit Court of Appeals decision reviewing a challenge to a local government MBE/WBE type program, which is instructive to the Consortium and the disparity study. In Virdi, the Eleventh Circuit struck down a MBE/WBE type goal program that the court held contained racial classifications. The court based its ruling primarily due to the failure of the DeKalb County School District (the "District") to seriously consider and implement a race-neutral program, and due to the infinite duration of the program.

Plaintiff Virdi, an Asian American architect of Indian descent, filed suit against the District, members of the DeKalb County Board of Education (both individually and in their official capacities) (the "Board") and the Superintendent (both individually and in his official capacity) (collectively "defendants") pursuant to 42 U.S.C. §§ 1981 and 1983 and the Fourteenth Amendment alleging that they discriminated against him on the basis of race when awarding architectural contracts. 135 Fed. Appx. 262, 264 (11th Cir. 2005). Virdi also alleged the school district's Minority Vendor Involvement Program was facially unconstitutional. Id.

The district court initially granted the defendants' motions for summary judgment on all of Virdi's claims and the Eleventh Circuit Court of Appeals reversed in part, vacated in part, and remanded. Id. On remand, the district court granted the defendants' motion for partial summary judgment on the facial challenge, and then granted the defendants' motion for a judgment as a matter of law on the remaining claims at the close of Virdi's case. Id.

In 1989, the Board appointed the Tillman Committee (the "Committee") to study participation of female- and minority-owned businesses with the District. Id. The Committee met with various District departments and a number of minority contractors who claimed they had unsuccessfully attempted to solicit business with the District. Id. Based upon a "general feeling" that minorities were under-represented, the Committee issued the Tillman Report (the "Report") stating "the Committee's impression that '[m]inorities ha[d] not participated in school board purchases and contracting in a ratio reflecting the minority make-up of the community." Id. The Report contained no specific evidence of past discrimination nor any factual findings of discrimination. Id.

The Report recommended that the District:

> (1) advertise bids and purchasing opportunities in newspapers targeting minorities, (2) conduct periodic seminars to educate minorities on doing business with the District, (3) notify organizations representing minority firms regarding bidding and purchasing opportunities, and (4) publish a "how to" booklet to be made available to any business interested in doing business with the District.

Id. The Report also recommended that the District adopt annual, aspirational participation goals for women- and minority-owned businesses. Id. The Report contained statements indicating the selection process should remain neutral and recommended that the Board adopt a non-discrimination statement. Id.

In 1991, the Board adopted the Report and implemented several of the recommendations, including advertising in the AJC, conducting seminars, and publishing the "how to" booklet. Id. The Board also implemented the Minority Vendor Involvement Program (the "MVP") which adopted the participation goals set forth in the Report. Id. at 265.

The Board delegated the responsibility of selecting architects to the Superintendent. Id. Virdi sent a letter to the District in October 1991 expressing interest in obtaining architectural contracts. Id. Virdi sent the letter to the District Manager and sent follow-up literature; he re-contacted the District Manager in 1992 and 1993. Id. In August 1994, Virdi sent a letter and a qualifications package to a project manager employed by Heery International. Id. In a follow-up conversation, the project manager allegedly told Virdi that his firm was not selected not based upon his qualifications, but because the "District was only looking for 'black owned firms.'" Id. Virdi sent a letter to the project manager requesting confirmation of his statement in writing and the project manager forwarded the letter to the District. Id.

After a series of meetings with District officials, in 1997, Virdi met with the newly hired Executive Director. Id. at 266. Upon request of the Executive Director, Virdi re-submitted his qualifications but was informed that he would be considered only for future projects (Phase III SPLOST projects). Id. Virdi then filed suit before any Phase III SPLOST projects were awarded. Id.

The Eleventh Circuit considered whether the MVP was facially unconstitutional and whether the defendants intentionally discriminated against Virdi on the basis of his race. The court held that strict scrutiny applies to all racial classifications and is not limited to merely set-asides or mandatory quotas; therefore, the MVP was subject to strict scrutiny because it contained racial classifications. Id. at 267. The court first questioned whether the identified government interest was compelling. Id. at 268. However, the court declined to reach that issue because it found the race-based participation goals were not narrowly tailored to achieving the identified government interest. Id.

The court held the MVP was not narrowly tailored for two reasons. Id. First, because no evidence existed that the District considered race-neutral alternatives to "avoid unwitting discrimination." The court found that "[w]hile narrow tailoring does not require exhaustion of every conceivable race-neutral alternative, it does require serious, good faith consideration of whether such alternatives could serve the governmental interest at stake." Id., citing Grutter v. Bollinger, 539 U.S. 306, 339 (2003), and Richmond v. J.A. Croson Co., 488 U.S. 469, 509-10 (1989). The court found that District could have engaged in any number of equally effective race-neutral alternatives, including using its outreach procedure and tracking the participation and success of minority-owned business as compared to non-minority-owned businesses. Id. at 268, n.8. Accordingly, the court held the MVP was not narrowly tailored. Id. at 268.

Second, the court held that the unlimited duration of the MVP's racial goals negated a finding of narrow tailoring. Id. "[R]ace conscious … policies must be limited in time." Id., citing Grutter, 539 U.S. at 342, and Walker v. City of Mequite, TX, 169 F.3d 973, 982 (5th Cir. 1999). The court held that because the government interest could have been achieved utilizing race-neutral measures, and because the racial goals were not temporally limited, the MVP could not withstand strict scrutiny and was unconstitutional on its face. Id. at 268.

With respect to Virdi's claims of intentional discrimination, the court held that although the MVP was facially unconstitutional, no evidence existed that the MVP or its unconstitutionality caused Virdi to lose a contract that he would have otherwise received. Id. Thus, because Virdi failed to establish a causal connection between the unconstitutional aspect of the MVP and his own injuries, the court affirmed the district court's grant of judgment on that issue. Id. at 269. Similarly, the court found that Virdi presented insufficient evidence to sustain his claims against the Superintendent for intentional discrimination. Id.

The court reversed the district court's order pertaining to the facial constitutionality of the MVP's racial goals, and affirmed the district court's order granting defendants' motion on the issue of intentional discrimination against Virdi. Id. at 270.

#### 4. Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), cert. denied, 540 U.S. 1027, 124 S. Ct. 556 (2003) (Scalia, Justice with whom the Chief Justice Rehnquist, joined, dissenting from the denial of certiorari)

This case is instructive to the Consortium and the disparity study because it is one of the only recent decisions to uphold the validity of a local government MBE/WBE program. It is significant to note that the Tenth Circuit did not apply the narrowly tailored test and thus did not rule on an application of the narrowly tailored test, instead finding that the plaintiff had waived that challenge in one of the earlier decisions in the case. This case also is one of the only cases to have found private sector marketplace discrimination as a basis to uphold an MBE/WBE-type program.

In Concrete Works the United States Court of Appeals for the Tenth Circuit held that the City and County of Denver had a compelling interest in limiting race discrimination in the construction industry, that the City had an important governmental interest in remedying gender discrimination in the construction industry, and found that the City and County of Denver had established a compelling governmental interest to have a race- and gender-based program. In Concrete Works, the Court of Appeals did not address the issue of whether the MBE/WBE Ordinance was narrowly tailored because it held the district court was barred under the law of the case doctrine from considering that issue since it was not raised on appeal by the plaintiff construction companies after they had lost that issue on summary judgment in an earlier decision. Therefore, the Court of Appeals did not reach a decision as to narrowly tailoring or consider that issue in the case.

**Case history.** Plaintiff, Concrete Works of Colorado, Inc. ("CWC") challenged the constitutionality of an "affirmative action" ordinance enacted by the City and County of Denver (hereinafter the "City" or "Denver"). 321 F.3d 950, 954 (10th Cir. 2003). The ordinance established participation goals for racial minorities and women on certain City construction and professional design projects. Id.

The City enacted an Ordinance No. 513 ("1990 Ordinance") containing annual goals for MBE/WBE utilization on all competitively bid projects. Id. at 956. A prime contractor could also satisfy the 1990 Ordinance requirements by using "good faith efforts." Id. In 1996, the City replaced the 1990 Ordinance with Ordinance No. 304 (the "1996 Ordinance"). The district court stated that the 1996 Ordinance differed from the 1990 Ordinance by expanding the definition of covered contracts to include some privately financed contracts on City-owned land; added updated information and findings to the statement of factual support for continuing the program; refined the requirements for MBE/WBE certification and graduation; mandated the use of MBEs and WBEs on change orders; and expanded sanctions for improper behavior by MBEs, WBEs or majority-owned contractors in failing to perform the affirmative action commitments made on City projects. Id. at 956-57.

The 1996 Ordinance was amended in 1998 by Ordinance No. 948 (the "1998 Ordinance"). The 1998 Ordinance reduced annual percentage goals and prohibited an MBE or a WBE, acting as a bidder, from counting self-performed work toward project goals. Id. at 957.

CWC filed suit challenging the constitutionality of the 1990 Ordinance. Id. The district court conducted a bench trial on the constitutionality of the three ordinances. Id. The district court ruled in favor of CWC and concluded that the ordinances violated the Fourteenth Amendment. Id. The City then appealed to the Tenth Circuit Court of Appeals. Id. The Court of Appeals reversed and remanded. Id. at 954.

The Court of Appeals applied strict scrutiny to race-based measures and intermediate scrutiny to the gender-based measures. Id. at 957-58, 959. The Court of Appeals also cited Richmond v. J.A. Croson Co., for the proposition that a governmental entity "can use its spending powers to remedy private discrimination, if it identifies that discrimination with the particularity required by the Fourteenth Amendment." 488 U.S. 469, 492 (1989) (plurality opinion). Because "an effort to alleviate the effects of *societal* discrimination is not a compelling interest," the court held that Denver could demonstrate that its interest is compelling only if it (1) identified the past or present discrimination "with some specificity," and (2) demonstrated that a "strong basis in evidence"

supports its conclusion that remedial action is necessary. Id. at 958, quoting Shaw v. Hunt, 517 U.S. 899, 909-10 (1996).

The court held that Denver could meet its burden without conclusively proving the existence of past or present racial discrimination. Id. Rather, Denver could rely on "empirical evidence that demonstrates 'a significant statistical disparity between the number of qualified minority contractors … and the number of such contractors actually engaged by the locality or the locality's prime contractors.'" Id., quoting Croson, 488 U.S. at 509 (plurality opinion). Furthermore, the court held that Denver could rely on statistical evidence gathered from the six-county Denver Metropolitan Statistical Area (MSA) and could supplement the statistical evidence with anecdotal evidence of public and private discrimination. Id.

The court held that Denver could establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination. Id. The court held that once Denver met its burden, CWC had to introduce "credible, particularized evidence to rebut [Denver's] initial showing of the existence of a compelling interest, which could consist of a neutral explanation for the statistical disparities." Id. (internal citations and quotations omitted). The court held that CWC could also rebut Denver's statistical evidence "by (1) showing that the statistics are flawed; (2) demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data." Id. (internal citations and quotations omitted). The court held that the burden of proof at all times remained with CWC to demonstrate the unconstitutionality of the ordinances. Id. at 960.

The court held that to meet its burden of demonstrating an important governmental interest per the intermediate scrutiny analysis, Denver must show that the gender-based measures in the ordinances were based on "reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions." Id., quoting Miss. Univ. for Women v. Hogan, 458 U.S. 718, 726 (1982).

**The studies**. Denver presented historical, statistical and anecdotal evidence in support of its MBE/WBE programs. Denver commissioned a number of studies to assess its MBE/WBE programs. Id. at 962. The consulting firm hired by Denver utilized disparity indices in part. Id. at 962. The 1990 Study also examined MBE and WBE utilization in the overall Denver MSA construction market, both public and private. Id. at 963.

The consulting firm also interviewed representatives of MBEs, WBEs, majority-owned construction firms, and government officials. Id. Based on this information, the 1990 Study concluded that, despite Denver's efforts to increase MBE and WBE participation in DPW projects, some Denver employees and private contractors engaged in conduct designed to circumvent the goals program. Id. After reviewing the statistical and anecdotal evidence contained in the 1990 Study, the City Council enacted the 1990 Ordinance. Id.

After the Tenth Circuit decided Concrete Works II, Denver commissioned another study (the "1995 Study"). Id. at 963. Using 1987 Census Bureau data, the 1995 Study again examined utilization of MBEs and WBEs in the construction and professional design industries within the Denver MSA. Id. The 1995 Study concluded that MBEs and WBEs were more likely to be one-person or family-run businesses. The Study concluded that Hispanic-owned firms were less likely to have paid employees than white-owned firms but that Asian/Native American-owned firms were more likely to have paid

employees than white- or other minority-owed firms. To determine whether these factors explained overall market disparities, the 1995 Study used the census data to calculate disparity indices for all firms in the Denver MSA construction industry and separately calculated disparity indices for firms with paid employees and firms with no paid employees. Id. at 964.

The Census Bureau information was also used to examine average revenues per employee for Denver MSA construction firms with paid employees. Hispanic-, Asian-, Native American-, and women-owned firms with paid employees all reported lower revenues per employee than majority-owned firms. The 1995 Study also used 1990 census data to calculate rates of self-employment within the Denver MSA construction industry. The Study concluded that the disparities in the rates of self-employment for blacks, Hispanics, and women persisted even after controlling for education and length of work experience. The 1995 Study controlled for these variables but reported that blacks and Hispanics working in the Denver MSA construction industry were less than half as likely to own their own businesses as were whites of comparable education and experience. Id.

In late 1994 and early 1995, a telephone survey of construction firms doing business in the Denver MSA was conducted. Id. at 965. Based on information obtained from the survey, the consultant calculated percentage utilization and percentage availability of MBEs and WBEs. Percentage utilization was calculated from revenue information provided by the responding firms. Percentage availability was calculated based on the number of MBEs and WBEs that responded to the survey question regarding revenues. Using these utilization and availability percentages, the 1995 Study showed disparity indices of 0.64 for MBEs and 0.70 for WBEs in the construction industry. In the professional design industry, disparity indices were 0.67 for MBEs and 0.69 for WBEs. The 1995 Study concluded that the disparity indices obtained from the telephone survey data were more accurate than those obtained from the 1987 census data because the data obtained from the telephone survey was more recent, had a narrower focus, and included data on C corporations. Additionally, it was possible to calculate disparity indices for professional design firms from the survey data. Id.

In 1997, the City conducted another study to estimate the availability of MBEs and WBEs and to examine, *inter alia,* whether race and gender discrimination limited the participation of MBEs and WBEs in construction projects of the type typically undertaken by the City (the "1997 Study"). Id. at 966. The 1997 Study used geographic and specialization information to calculate MBE/WBE availability. Availability was defined as "the ratio of MBE/WBE firms to the total number of firms in the four-digit SIC codes and geographic market area relevant to the City's contracts." Id.

The 1997 Study compared MBE/WBE availability and utilization in the Colorado construction industry. Id. The statewide market was used because necessary information was unavailable for the Denver MSA. Id. at 967. Additionally, data collected in 1987 by the Census Bureau was used because more current data was unavailable. The Study calculated disparity indices for the statewide construction market in Colorado as follows: 0.41 for African American firms, 0.40 for Hispanic firms, 0.14 for Asian and other minorities, and 0.74 for women-owned firms. Id.

The 1997 Study also contained an analysis of whether African Americans, Hispanics, or Asian Americans working in the construction industry are less likely to be self-employed than similarly situated whites. Id. Using data from the Public Use Microdata Samples ("PUMS") of the 1990 Census of Population and Housing, the Study used a sample of individuals working in the

construction industry. The study concluded that in both Colorado and the Denver MSA, African Americans, Hispanics, and Native Americans working in the construction industry have lower self-employment rates than whites. Asian Americans had higher self-employment rates than whites.

Using the availability figures calculated earlier in the Study, the Study then compared the actual availability of MBE/WBEs in the Denver MSA with the potential availability of MBE/WBEs if they formed businesses at the same rate as whites with the same characteristics. Id. Finally, the Study examined whether self-employed minorities and women in the construction industry have lower earnings than white males with similar characteristics. Id. at 968. Using regression analysis, the Study compared business owners with similar years of education, of similar age, doing business in the same geographic area, and having other similar demographic characteristics. Even after controlling for several factors, the results showed that self-employed African Americans, Hispanics, Native Americans, and women had lower earnings than white males. Id.

The 1997 Study also conducted a mail survey of both MBE/WBEs and non-MBE/WBEs to obtain anecdotal evidence on their experiences in the construction industry. Of the MBE/WBEs who responded, 35 percent indicated that they had experienced at least one incident of disparate treatment within the last five years while engaged in business activities. The survey also posed the following question: "How often do prime contractors who use your firm as a subcontractor on public sector projects with [MBE/WBE] goals or requirements ... also use your firm on public sector or private sector projects without [MBE/WBE] goals or requirements?" Fifty-eight percent of minorities and 41 percent of white women who responded to this question indicated they were "seldom or never" used on non-goals projects. Id.

MBE/WBEs were also asked whether the following aspects of procurement made it more difficult or impossible to obtain construction contracts: (1) bonding requirements, (2) insurance requirements, (3) large project size, (4) cost of completing proposals, (5) obtaining working capital, (6) length of notification for bid deadlines, (7) prequalification requirements, and (8) previous dealings with an agency. This question was also asked of non-MBE/WBEs in a separate survey. With one exception, MBE/WBEs considered each aspect of procurement more problematic than non-MBE/WBEs. To determine whether a firm's size or experience explained the different responses, a regression analysis was conducted that controlled for age of the firm, number of employees, and level of revenues. The results again showed that with the same, single exception, MBE/WBEs had more difficulties than non-MBE/WBEs with the same characteristics. Id. at 968-69.

After the 1997 Study was completed, the City enacted the 1998 Ordinance. The 1998 Ordinance reduced the annual goals to 10 percent for both MBEs and WBEs and eliminated a provision which previously allowed MBE/WBEs to count their own work toward project goals. Id. at 969.

The anecdotal evidence included the testimony of the senior vice-president of a large, majority-owned construction firm who stated that when he worked in Denver, he received credible complaints from minority and women-owned construction firms that they were subject to different work rules than majority-owned firms. Id. He also testified that he frequently observed graffiti containing racial or gender epithets written on job sites in the Denver metropolitan area. Further, he stated that he believed, based on his personal experiences, that many majority-owned firms refused to hire minority- or women-owned subcontractors because they believed those firms were not competent. Id.

Several MBE/WBE witnesses testified that they experienced difficulty prequalifying for private sector projects and projects with the City and other governmental entities in Colorado. One individual testified that her company was required to prequalify for a private sector project while no similar requirement was imposed on majority-owned firms. Several others testified that they attempted to prequalify for projects but their applications were denied even though they met the prequalification requirements. Id.

Other MBE/WBEs testified that their bids were rejected even when they were the lowest bidder; that they believed they were paid more slowly than majority-owned firms on both City projects and private sector projects; that they were charged more for supplies and materials; that they were required to do additional work not part of the subcontracting arrangement; and that they found it difficult to join unions and trade associations. Id. There was testimony detailing the difficulties MBE/WBEs experienced in obtaining lines of credit. One WBE testified that she was given a false explanation of why her loan was declined; another testified that the lending institution required the co-signature of her husband even though her husband, who also owned a construction firm, was not required to obtain her co-signature; a third testified that the bank required her father to be involved in the lending negotiations. Id.

The court also pointed out anecdotal testimony involving recitations of racially- and gender-motivated harassment experienced by MBE/WBEs at work sites. There was testimony that minority and female employees working on construction projects were physically assaulted and fondled, spat upon with chewing tobacco, and pelted with two-inch bolts thrown by males from a height of 80 feet. Id. at 969-70.

**The legal framework applied by the court.** The court held that the district court incorrectly believed Denver was required to *prove* the existence of discrimination. Instead of considering whether Denver had demonstrated strong evidence from which an inference of past or present discrimination could be drawn, the district court analyzed whether Denver's evidence showed that there *is* pervasive discrimination. Id. at 970. The court, quoting Concrete Works II, stated that "the Fourteenth Amendment does not require a court to make an ultimate finding of discrimination before a municipality may take affirmative steps to eradicate discrimination." Id. at 970, quoting Concrete Works II, 36 F.3d 1513, 1522 (10th Cir. 1994). Denver's initial burden was to demonstrate that strong evidence of discrimination supported its conclusion that remedial measures were necessary. Strong evidence is that "approaching a prima facie case of a constitutional or statutory violation," *not* irrefutable or definitive proof of discrimination. Id. at 97, quoting Croson, 488 U.S. at 500. The burden of proof at all times remained with the contractor plaintiff to prove by a preponderance of the evidence that Denver's "evidence did not support an inference of prior discrimination and thus a remedial purpose." Id., quoting Adarand VII, 228 F.3d at 1176.

Denver, the court held, did introduce evidence of discrimination against each group included in the ordinances. Id. at 971. Thus, Denver's evidence did not suffer from the problem discussed by the court in Croson. The court held the district court erroneously concluded that Denver must demonstrate that the private firms directly engaged in any discrimination in which Denver passively participates do so intentionally, with the purpose of disadvantaging minorities and women. The Croson majority concluded that a "city would have a compelling interest in preventing its tax dollars from assisting [local trade] organizations in maintaining a racially segregated construction market." Id. at 971, quoting Croson, 488 U.S. 503. Thus, the court held Denver's burden was to introduce

evidence which raised the inference of discriminatory exclusion in the local construction industry and linked its spending to that discrimination. Id.

The court noted the Supreme Court has stated that the inference of discriminatory exclusion can arise from statistical disparities. Id., citing Croson, 488 U.S. at 503. Accordingly, it concluded that Denver could meet its burden through the introduction of statistical and anecdotal evidence. To the extent the district court required Denver to introduce additional evidence to show discriminatory motive or intent on the part of private construction firms, the district court erred. Denver, according to the court, was under no burden to identify any specific practice or policy that resulted in discrimination. Neither was Denver required to demonstrate that the purpose of any such practice or policy was to disadvantage women or minorities. Id. at 972.

The court found Denver's statistical and anecdotal evidence relevant because it identifies discrimination in the local construction industry, not simply discrimination in society. The court held the genesis of the identified discrimination is irrelevant and the district court erred when it discounted Denver's evidence on that basis. Id.

The court held the district court erroneously rejected the evidence Denver presented on marketplace discrimination. Id. at 973. The court rejected the district court's erroneous legal conclusion that a municipality may only remedy its own discrimination. The court stated this conclusion is contrary to the holdings in Concrete Works II and the plurality opinion in Croson. Id. The court held it previously recognized in this case that "a municipality has a compelling interest in taking affirmative steps to remedy both public *and private* discrimination specifically identified in its area." Id., quoting Concrete Works II, 36 F.3d at 1529 (emphasis added). In Concrete Works II, the court stated that "we do not read Croson as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination." Id., quoting Concrete Works II, 36 F.3d at 1529.

The court stated that Denver could meet its burden of demonstrating its compelling interest with evidence of private discrimination in the local construction industry coupled with evidence that it has become a passive participant in that discrimination. Id. at 973. Thus, Denver was not required to demonstrate that it is "guilty of prohibited discrimination" to meet its initial burden. Id.

Additionally, the court had previously concluded that Denver's statistical studies, which compared utilization of MBE/WBEs to availability, supported the inference that "local prime contractors" are engaged in racial and gender discrimination. Id. at 974, quoting Concrete Works II, 36 F.3d at 1529. Thus, the court held Denver's disparity studies should not have been discounted because they failed to specifically identify those individuals or firms responsible for the discrimination. Id.

**The court's rejection of CWC's arguments and the district court findings. Use of marketplace data**. The court held the district court, *inter alia,* erroneously concluded that the disparity studies upon which Denver relied were significantly flawed because they measured discrimination in the overall Denver MSA construction industry, not discrimination by the City itself. Id. at 974. The district court's conclusion, however, the court found was directly contrary to holding in Adarand VII that evidence of both public and private discrimination in the construction industry is relevant. Id., citing Adarand VII, 228 F.3d at 1166-67).

The court held the conclusion reached by the majority in Croson that marketplace data is relevant in equal protection challenges to affirmative action programs was consistent with the approach later taken by the court in Shaw v. Hunt. Id. at 975. In Shaw, a majority of the court relied on the majority opinion in Croson for the broad proposition that a governmental entity's "interest in remedying the effects of past or present racial discrimination may in the proper case justify a government's use of racial distinctions." Id., quoting Shaw, 517 U.S. at 909. The Shaw court did not adopt any requirement that only discrimination by the governmental entity, either directly or by utilizing firms engaged in discrimination on projects funded by the entity, was remediable. The court, however, did set out two conditions which must be met for the governmental entity to show a compelling interest. "First, the discrimination must be identified discrimination." Id. at 976, quoting Shaw, 517 U.S. at 910. The City can satisfy this condition by identifying the discrimination, "'*public or private,* with some specificity.' " Id. at 976, citing Shaw, 517 U.S. at 910, quoting Croson, 488 U.S. at 504 (emphasis added). The governmental entity must also have a "strong basis in evidence to conclude that remedial action was necessary." Id. Thus, the court concluded Shaw specifically stated that evidence of either public or private discrimination could be used to satisfy the municipality's burden of producing strong evidence. Id. at 976.

In Adarand VII, the court noted it concluded that evidence of marketplace discrimination can be used to support a compelling interest in remedying past or present discrimination through the use of affirmative action legislation. Id., citing Adarand VII, 228 F.3d at 1166-67 ("[W]e may consider public and private discrimination not only in the specific area of government procurement contracts but also in the construction industry generally; thus *any findings Congress has made as to the entire construction industry are relevant.*" (emphasis added)). Further, the court pointed out in this case it earlier rejected the argument CWC reasserted here that marketplace data is irrelevant and remanded the case to the district court to determine whether Denver could link its public spending to "the Denver MSA evidence of industry-wide discrimination." Id., quoting Concrete Works II, 36 F.3d at 1529. The court stated that evidence explaining "the Denver government's role in contributing to the underutilization of MBEs and WBEs in the *private construction market in the Denver MSA*" was relevant to Denver's burden of producing strong evidence. Id., quoting Concrete Works II, 36 F.3d at 1530 (emphasis added).

Consistent with the court's mandate in Concrete Works II, the City attempted to show at trial that it "indirectly contributed to private discrimination by awarding public contracts to firms that in turn discriminated against MBE and/or WBE subcontractors in other private portions of their business." Id. The City can demonstrate that it is a "'passive participant' in a system of racial exclusion practiced by elements of the local construction industry" by compiling evidence of marketplace discrimination and then linking its spending practices to the private discrimination. Id., quoting Croson, 488 U.S. at 492.

The court rejected CWC's argument that the lending discrimination studies and business formation studies presented by Denver were irrelevant. In Adarand VII, the court concluded that evidence of discriminatory barriers to the formation of businesses by minorities and women and fair competition between MBE/WBEs and majority-owned construction firms shows a "strong link" between a government's "disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination." Id. at 977, quoting Adarand VII, 228 F.3d at 1167-68. The court found that evidence that private discrimination resulted in barriers to business formation is relevant because it demonstrates that MBE/WBEs are precluded *at the outset* from competing for

public construction contracts. The court also found that evidence of barriers to fair competition is relevant because it again demonstrates that *existing* MBE/WBEs are precluded from competing for public contracts. Thus, like the studies measuring disparities in the utilization of MBE/WBEs in the Denver MSA construction industry, studies showing that discriminatory barriers to business formation exist in the Denver construction industry are relevant to the City's showing that it indirectly participates in industry discrimination. Id. at 977.

The City presented evidence of lending discrimination to support its position that MBE/WBEs in the Denver MSA construction industry face discriminatory barriers to business formation. Denver introduced a disparity study prepared in 1996 and sponsored by the Denver Community Reinvestment Alliance, Colorado Capital Initiatives, and the City. The Study ultimately concluded that "despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial." Id. at 977-78. In Adarand VII, the court concluded that this study, among other evidence, "strongly support[ed] an initial showing of discrimination in lending." Id. at 978, quoting, Adarand VII, 228 F.3d at 1170, n. 13 ("Lending discrimination alone of course does not justify action in the construction market. However, the persistence of such discrimination ... supports the assertion that the formation, as well as utilization, of minority-owned construction enterprises has been impeded."). The City also introduced anecdotal evidence of lending discrimination in the Denver construction industry.

CWC did not present any evidence that undermined the reliability of the lending discrimination evidence but simply repeated the argument, foreclosed by circuit precedent, that it is irrelevant. The court rejected the district court criticism of the evidence because it failed to determine whether the discrimination resulted from discriminatory attitudes or from the neutral application of banking regulations. The court concluded, that discriminatory motive can be inferred from the results shown in disparity studies. The court held the district court's criticism did not undermine the study's reliability as an indicator that the City is passively participating in marketplace discrimination. The court noted that, in Adarand VII it took "judicial notice of the obvious causal connection between access to capital and ability to implement public works construction projects." Id. at 978, quoting Adarand VII, 228 F.3d at 1170.

Denver also introduced evidence of discriminatory barriers to competition faced by MBE/WBEs in the form of business formation studies. The 1990 Study and the 1995 Study both showed that all minority groups in the Denver MSA formed their own construction firms at rates lower than the total population but that women formed construction firms at higher rates. The 1997 Study examined self-employment rates and controlled for gender, marital status, education, availability of capital, and personal/family variables. As discussed, *supra,* the Study concluded that African Americans, Hispanics, and Native Americans working in the construction industry have lower rates of self-employment than similarly situated whites. Asian Americans had higher rates. The 1997 Study also concluded that minority and female business owners in the construction industry, with the exception of Asian American owners, have lower earnings than white male owners. This conclusion was reached after controlling for education, age, marital status, and disabilities. Id. at 978.

The court held that the district court's conclusion that the business formation studies could not be used to justify the ordinances conflicts with its holding in Adarand VII. "[T]he existence of evidence indicating that the number of [MBEs] would be significantly (but unquantifiably) higher but for

such barriers is nevertheless relevant to the assessment of whether a disparity is sufficiently significant to give rise to an inference of discriminatory exclusion." Id. at 979, quoting Adarand VII,228 F.3d at 1174.

In sum, the court held the district court erred when it refused to consider or give sufficient weight to the lending discrimination study, the business formation studies, and the studies measuring marketplace discrimination. That evidence was legally relevant to the City's burden of demonstrating a strong basis in evidence to support its conclusion that remedial legislation was necessary. Id. at 979-80.

**Variables.** CWC challenged Denver's disparity studies as unreliable because the disparities shown in the studies may be attributable to firm size and experience rather than discrimination. Denver countered, however, that a firm's size has little affect on its qualifications or its ability to provide construction services and that MBE/WBEs, like all construction firms, can perform most services either by hiring additional employees or by employing subcontractors. CWC responded that elasticity itself is relative to size and experience; MBE/WBEs are less capable of expanding because they are smaller and less experienced. Id. at 980.

The court concluded that even if it assumed that MBE/WBEs are less able to expand because of their smaller size and more limited experience, CWC did not respond to Denver's argument and the evidence it presented showing that experience and size are not race- and gender-neutral variables and that MBE/WBE construction firms are generally smaller and less experienced *because* of industry discrimination. Id. at 981. The lending discrimination and business formation studies, according to the court, both strongly supported Denver's argument that MBE/WBEs are smaller and less experienced because of marketplace and industry discrimination. In addition, Denver's expert testified that discrimination by banks or bonding companies would reduce a firm's revenue and the number of employees it could hire. Id.

Denver also argued its Studies controlled for size and the 1995 Study controlled for experience. It asserted that the 1990 Study measured revenues per employee for construction MBE/WBEs and concluded that the resulting disparities, "suggest[ ] that even among firms of the same employment size, industry utilization of MBEs and WBEs was lower than that of non-minority male-owned firms." Id. at 982. Similarly, the 1995 Study controlled for size, calculating, *inter alia,* disparity indices for firms with no paid employees which presumably are the same size.

Based on the uncontroverted evidence presented at trial, the court concluded that the district court did not give sufficient weight to Denver's disparity studies because of its erroneous conclusion that the studies failed to adequately control for size and experience. The court held that Denver is permitted to make assumptions about capacity and qualification of MBE/WBEs to perform construction services if it can support those assumptions. The court found the assumptions made in this case were consistent with the evidence presented at trial and supported the City's position that a firm's size does not affect its qualifications, willingness, or ability to perform construction services and that the smaller size and lesser experience of MBE/WBEs are, themselves, the result of industry discrimination. Further, the court pointed out CWC did not conduct its own disparity study using marketplace data and thus did not demonstrate that the disparities shown in Denver's studies would decrease or disappear if the studies controlled for size and experience to CWC's satisfaction.

Consequently, the court held CWC's rebuttal evidence was insufficient to meet its burden of discrediting Denver's disparity studies on the issue of size and experience. Id. at 982.

**Specialization.** The district court also faulted Denver's disparity studies because they did not control for firm specialization. The court noted the district court's criticism would be appropriate only if there was evidence that MBE/WBEs are more likely to specialize in certain construction fields. Id. at 982.

The court found there was no identified evidence showing that certain construction specializations require skills less likely to be possessed by MBE/WBEs. The court found relevant the testimony of the City's expert, that the data he reviewed showed that MBEs were represented "widely across the different [construction] specializations." Id. at 982-83. There was no contrary testimony that aggregation bias caused the disparities shown in Denver's studies. Id. at 983.

The court held that CWC failed to demonstrate that the disparities shown in Denver's studies are eliminated when there is control for firm specialization. In contrast, one of the Denver studies, which controlled for SIC-code subspecialty still showed disparities, provided support for Denver's argument that firm specialization does not explain the disparities. Id. at 983.

The court pointed out that disparity studies may make assumptions about availability as long as the same assumptions can be made for all firms. Id. at 983.

**Utilization of MBE/WBEs on city projects.** CWC argued that Denver could not demonstrate a compelling interest because it overutilized MBE/WBEs on City construction projects. This argument, according to the court, was an extension of CWC's argument that Denver could justify the ordinances only by presenting evidence of discrimination by the City itself or by contractors while working on City projects. Because the court concluded that Denver could satisfy its burden by showing that it is an indirect participant in industry discrimination, CWC's argument relating to the utilization of MBE/WBEs on City projects goes only to the weight of Denver's evidence. Id. at 984.

Consistent with the court's mandate in Concrete Works II, at trial Denver sought to demonstrate that the utilization data from projects subject to the goals program was tainted by the program and "reflect[ed] the intended remedial effect on MBE and WBE utilization." Id. at 984, quoting Concrete Works II, 36 F.3d at 1526. Denver argued that the non-goals data was the better indicator of past discrimination in public contracting than the data on all City construction projects. Id. at 984-85. The court concluded that Denver presented ample evidence to support the conclusion that the evidence showing MBE/WBE utilization on City projects not subject to the ordinances or the goals programs is the better indicator of discrimination in City contracting. Id. at 985.

The court rejected CWC's argument that the marketplace data was irrelevant but agreed that the non-goals data was also relevant to Denver's burden. The court noted that Denver did not rely heavily on the non-goals data at trial but focused primarily on the marketplace studies to support its burden. Id. at 985.

In sum, the court held Denver demonstrated that the utilization of MBE/WBEs on City projects had been affected by the affirmative action programs that had been in place in one form or another since 1977. Thus, the non-goals data was the better indicator of discrimination in public contracting. The court concluded that, on balance, the non-goals data provided some support for Denver's position

that its belief that racial and gender discrimination existed in public contracting before the enactment of the ordinances was supported by strong evidence. Id. at 987-88.

**Anecdotal evidence.** The anecdotal evidence, according to the court, included several incidents involving profoundly disturbing behavior on the part of lenders, majority-owned firms, and individual employees. Id. at 989. The court found that the anecdotal testimony revealed behavior that was not merely sophomoric or insensitive, but which resulted in real economic or physical harm. While CWC also argued that all new or small contractors have difficulty obtaining credit and that treatment the witnesses characterized as discriminatory is experienced by all contractors, Denver's witnesses specifically testified that they believed the incidents they experienced were motivated by race or gender discrimination. The court found they supported those beliefs with testimony that majority-owned firms were not subject to the same requirements imposed on them. Id.

The court held there was no merit to CWC's argument that the witnesses' accounts must be verified to provide support for Denver's burden. The court stated that anecdotal evidence is nothing more than a witness' narrative of an incident told from the witness' perspective and including the witness' perceptions. Id.

After considering Denver's anecdotal evidence, the district court found that the evidence "shows that race, ethnicity and gender affect the construction industry and those who work in it" and that the egregious mistreatment of minority and women employees "had direct financial consequences" on construction firms. Id. at 989, quoting Concrete Works III, 86 F. Supp. 2d at 1074, 1073. Based on the district court's findings regarding Denver's anecdotal evidence and its review of the record, the court concluded that the anecdotal evidence provided persuasive, unrebutted support for Denver's initial burden. Id. at 989-90, citing Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 339 (1977) (concluding that anecdotal evidence presented in a pattern or practice discrimination case was persuasive because it "brought the cold [statistics] convincingly to life").

**Summary.** The court held the record contained extensive evidence supporting Denver's position that it had a strong basis in evidence for concluding that the 1990 Ordinance and the 1998 Ordinance were necessary to remediate discrimination against both MBEs and WBEs. Id. at 990. The information available to Denver and upon which the ordinances were predicated, according to the court, indicated that discrimination was persistent in the local construction industry and that Denver was, at least, an indirect participant in that discrimination.

To rebut Denver's evidence, the court stated CWC was required to "establish that Denver's evidence did not constitute strong evidence of such discrimination." Id. at 991, quoting Concrete Works II, 36 F.3d at 1523. CWC could not meet its burden of proof through conjecture and unsupported criticisms of Denver's evidence. Rather, it must present "credible, particularized evidence." Id., quoting Adarand VII, 228 F.3d at 1175. The court held that CWC did not meet its burden. CWC *hypothesized* that the disparities shown in the studies on which Denver relies could be explained by any number of factors other than racial discrimination. However, the court found it did not conduct its own marketplace disparity study controlling for the disputed variables and presented no other evidence from which the court could conclude that such variables explain the disparities. Id. at 991-92.

**Narrow tailoring.** Having concluded that Denver demonstrated a compelling interest in the race-based measures and an important governmental interest in the gender-based measures, the court held it must examine whether the ordinances were narrowly tailored to serve the compelling interest and are substantially related to the achievement of the important governmental interest. Id. at 992.

The court stated it had previously concluded in its earlier decisions that Denver's program was narrowly tailored. CWC appealed the grant of summary judgment and that appeal culminated in the decision in Concrete Works II. The court reversed the grant of summary judgment on the compelling interest issue and concluded that CWC had waived any challenge to the narrow tailoring conclusion reached by the district court. Because the court found Concrete Works did not challenge the district court's conclusion with respect to the second prong of Croson's strict scrutiny standard – i.e. that the Ordinance is narrowly tailored to remedy past and present discrimination – the court held it need not address this issue. Id. at 992, citing Concrete Works II, 36 F.3d at 1531, n. 24.

The court concluded that the district court lacked authority to address the narrow tailoring issue on remand because none of the exceptions to the law of the case doctrine are applicable. The district court's earlier determination that Denver's affirmative-action measures were narrowly tailored is law of the case and binding on the parties.

### 5. In Re City of Memphis, West Tennessee Chapter of Associated Builders and Contractors, Zellner Construction Company, Inc. v. City of Memphis, 293 F. 3d 345 (6th Cir. 2002)

This case is instructive to the Consortium and the disparity study in particular based on its holding that a local government may be prohibited from utilizing post-enactment evidence in support of a MBE/WBE program. The United States Court of Appeals for Sixth Circuit held that pre-enactment evidence was required to justify the City of Memphis' MBE/WBE program. The Sixth Circuit held that a government must have had sufficient evidentiary justification for a racially conscious statute in advance of its passage.

The district court had ruled that the City could not introduce the post-enactment study as evidence of a compelling interest to justify its MBE/WBE program. The Sixth Circuit denied the City's application for an interlocutory appeal on the district court's order and refused to grant the City's request to appeal this issue.

### 6. Builder's Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001)

This case is instructive to the Consortium and the disparity study because of its analysis of the Cook County MBE/WBE program and the evidence used to support that program. The decision emphasizes the need for any race-conscious program to be based upon credible evidence of discrimination by the local government against MBE/WBEs and to be narrowly tailored to remedy only that identified discrimination.

In Builder's Ass'n of Greater Chicago v. County of Cook, Chicago, 256 F.3d 642 (7th Cir. 2001) the United States Court of Appeals for the Seventh Circuit held the Cook County, Chicago MBE/WBE program was unconstitutional. The court concluded there was insufficient evidence of a compelling interest. The court held there was no credible evidence that Cook County in the award of construction contacts discriminated against any of the groups "favored" by the Program. The court

also found that the Program was not "narrowly tailored" to remedy the wrong sought to be redressed, in part because it was over-inclusive in the definition of minorities. The court noted the list of minorities included groups that have not been subject to discrimination by Cook County.

### 7. Associated Gen. Contractors v. Drabik, 214 F.3d 730 (6th Cir. 2000), aff'g Case No. C2-98-943, 1998 WL 812241 (S.D. Ohio 1998)

This case is instructive to the Consortium and the disparity study based on the analysis applied in finding the evidence insufficient to justify an MBE/WBE program, and the application of the narrowly tailored test. The Sixth Circuit Court of Appeals enjoined the enforcement of the state MBE program, and in so doing reversed state court precedent finding the program constitutional. This case affirmed a district court decision enjoining the award of a "set-aside" contract based on the State of Ohio's MBE program with the award of construction contracts. The court held, among other findings, that the mere existence of societal discrimination was insufficient to support a racial classification. The court found that the economic data was insufficient and too outdated. The court held the State could not establish a compelling governmental interest and that the statute was not narrowly tailored. The court held, among other findings, the statute failed the narrow tailoring test because there was no evidence that the State had considered race-neutral remedies.

The court was mindful of the fact that it was striking down an entire class of programs by declaring the State of Ohio MBE statute in question unconstitutional, and noted that its decision was "not reconcilable" with the Ohio Supreme Court's decision in Ritchie Produce, 707 N.E.2d 871 (Ohio 1999) (upholding the Ohio State MBE Program).

### 8. W.H. Scott Constr. Co. v. City of Jackson, 199 F.3d 206 (5th Cir. 1999)

This case is instructive to the Consortium and the disparity study because the decision highlights the evidentiary burden imposed by the courts necessary to support a local MBE/WBE program. In addition, the Fifth Circuit permitted the aggrieved contractor to recover lost profits from the City of Jackson, Mississippi due to the City's enforcement of the MBE/WBE program that the court held was unconstitutional.

The Fifth Circuit, applying strict scrutiny, held that the City of Jackson, Mississippi failed to establish a compelling governmental interest to justify its policy placing 15 percent minority participation goals for City construction contracts. In addition, the court held the evidence upon which the City relied was faulty for several reasons, including because it was restricted to the letting of prime contracts by the City under the City's Program, and it did not include an analysis of the availability and utilization of qualified minority subcontractors, the relevant statistical pool in the City's construction projects. Significantly, the court also held that the plaintiff in this case could recover lost profits against the City as damages as a result of being denied a bid award based on the application of the MBE/WBE program.

### 9. Eng'g Contractors Ass'n of S. Florida v. Metro. Dade County, 122 F.3d 895 (11th Cir. 1997)

The analysis of the Eleventh Circuit in Engineering Contractors Association is instructive to the Consortium and to the disparity study. In Engineering Contractors Association, six trade organizations (the "plaintiffs") filed suit in the District Court for the Southern District of Florida, challenging three affirmative action programs administered by Engineering Contractors Association, Florida, (the "County") as violative of the Equal Protection Clause. 122 F.3d 895, 900 (11th Cir.

1997). The three affirmative action programs challenged were the Black Business Enterprise program ("BBE"), the Hispanic Business Enterprise program ("HBE"), and the Woman Business Enterprise program, ("WBE"), (collectively "MWBE" programs). Id. The plaintiffs challenged the application of the program to County construction contracts. Id.

For certain classes of construction contracts valued over $25,000, the County set participation goals of 15 percent for BBEs, 19 percent for HBEs, and 11 percent for WBEs. Id. at 901. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County Commission would make the final determination and its decision was appealable to the County Manager. Id. The County reviewed the efficacy of the MBE/WBE programs annually, and reevaluated the continuing viability of the MBE/WBE programs every five years. Id.

In a bench trial, the district court applied strict scrutiny to the BBE and HBE programs and held that the County lacked the requisite "strong basis in evidence" to support the race- and ethnicity-conscious measures. Id. at 902. The district court applied intermediate scrutiny to the WBE program and found that the "County had presented insufficient probative evidence to support its stated rationale for implementing a gender preference." Id. Therefore, the County had failed to demonstrate a "compelling interest" necessary to support the BBE and HBE programs, and failed to demonstrate an "important interest" necessary to support the WBE program. Id. The district court assumed the existence of a sufficient evidentiary basis to support the existence of the MBE/WBE programs but held the BBE and HBE programs were not narrowly tailored to the interests they purported to serve; the district court held the WBE program was not substantially related to an important government interest. Id. The district court entered a final judgment enjoining the County from continuing to operate the MBE/WBE programs and the County appealed. The Eleventh Circuit Court of Appeals affirmed. Id. at 900, 903.

On appeal, the Eleventh Circuit considered four major issues:

1. Whether the plaintiffs had standing. [The Eleventh Circuit answered this in the affirmative and that portion of the opinion is omitted from this summary].

2. Whether the district court erred in finding the County lacked a "strong basis in evidence" to justify the existence of the BBE and HBE programs.

3. Whether the district court erred in finding the County lacked a "sufficient probative basis in evidence" to justify the existence of the WBE program.

4. Whether the MBE/WBE programs were narrowly tailored to the interests they were purported to serve. Id. at 903.

The Eleventh Circuit held that the BBE and HBE programs were subject to the strict scrutiny standard enunciated by the U.S. Supreme Court in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). Id. at 906. Under this standard, "an affirmative action program must be based upon a 'compelling government interest' and must be 'narrowly tailored' to achieve that interest." Id. The Eleventh Circuit further noted:

> In practice, the interest that is alleged in support of racial preferences is almost always the same – remedying past or present discrimination. That interest is widely accepted as compelling. As a result, the true test of an affirmative action program is usually not the nature of the government's interest, but rather the adequacy of the evidence of discrimination offered to show that interest. Id. (internal citations omitted).

Therefore, strict scrutiny requires a finding of a "'strong basis in evidence' to support the conclusion that remedial action is necessary." Id., citing Croson, 488 U.S. at 500). The requisite "'strong basis in evidence' cannot rest on 'an amorphous claim of societal discrimination, on simple legislative assurances of good intention, or on congressional findings of discrimination in the national economy.'" Id. at 907, citing Ensley Branch, NAACPv. Seibels, 31 F.3d 1548, 1565 (11th Cir. 1994) (citing and applying Croson)). However, the Eleventh Circuit found that a governmental entity can "justify affirmative action by demonstrating 'gross statistical disparities' between the proportion of minorities hired … and the proportion of minorities willing and able to do the work … Anecdotal evidence may also be used to document discrimination, especially if buttressed by relevant statistical evidence." Id. (internal citations omitted).

Notwithstanding the "exceedingly persuasive justification" language utilized by the Supreme Court in United States v. Virginia, 116 S. Ct. 2264 (1996) (evaluating gender-based government action), the Eleventh Circuit held that the WBE program was subject to traditional intermediate scrutiny. Id. at 908. Under this standard, the government must provide "sufficient probative evidence" of discrimination, which is a lesser standard than the "strong basis in evidence" under strict scrutiny. Id. at 910.

The County provided two types of evidence in support of the MBE/WBE programs: (1) statistical evidence, and (2) non-statistical "anecdotal" evidence. Id. at 911. As an initial matter, the Eleventh Circuit found that in support of the BBE program, the County permissibly relied on substantially "post-enactment" evidence (i.e. evidence based on data related to years following the initial enactment of the BBE program). Id. However, "such evidence carries with it the hazard that the program at issue may itself be masking discrimination that might otherwise be occurring in the relevant market." Id. at 912. A district court should not "speculate about what the data *might* have shown had the BBE program never been enacted." Id.

**The statistical evidence**. The County presented five basic categories of statistical evidence: (1) County contracting statistics; (2) County subcontracting statistics; (3) marketplace data statistics; (4) The Wainwright Study; and (5) The Brimmer Study. Id. In summary, the Eleventh Circuit held that the County's statistical evidence (described more fully below) was subject to more than one interpretation. Id. at 924. The district court found that the evidence was "insufficient to form the requisite strong basis in evidence for implementing a racial or ethnic preference, and that it was

insufficiently probative to support the County's stated rationale for imposing a gender preference." Id. The district court's view of the evidence was a permissible one. Id.

**County contracting statistics.** The County presented a study comparing three factors for County non-procurement construction contracts over two time periods (1981-1991 and 1993): (1) the percentage of bidders that were MBE/WBE firms; (2) the percentage of awardees that were MBE/WBE firms; and (3) the proportion of County contract dollars that had been awarded to MBE/WBE firms. Id. at 912.

The Eleventh Circuit found that notably, for the BBE and HBE statistics, generally there were no "consistently negative disparities between the bidder and awardee percentages. In fact, by 1993, the BBE and HBE bidders are being awarded *more* than their proportionate 'share' … when the bidder percentages are used as the baseline." Id. at 913. For the WBE statistics, the bidder / awardee statistics were "decidedly mixed" as across the range of County construction contracts. Id.

The County then refined those statistics by adding in the total percentage of annual County construction dollars awarded to MBE/WBEs, by calculating "disparity indices" for each program and classification of construction contract. The Eleventh Circuit explained:

> [A] disparity index compares the amount of contract awards a group actually got to the amount we would have expected it to get based on that group's bidding activity and awardee success rate. More specifically, a disparity index measures the participation of a group in County contracting dollars by dividing that group's contract dollar percentage by the related bidder or awardee percentage, and multiplying that number by 100 percent.

Id. at 914. "The utility of disparity indices or similar measures … has been recognized by a number of federal circuit courts." Id.

The Eleventh Circuit found that "[i]n general … disparity indices of 80 percent or greater, which are close to full participation, are not considered indications of discrimination." Id. The Eleventh Circuit noted that "the EEOC's disparate impact guidelines use the 80 percent test as the boundary line for determining a prima facie case of discrimination." Id., citing 29 C.F.R. § 1607.4D. In addition, no circuit that has "explicitly endorsed the use of disparity indices [has] indicated that an index of 80 percent or greater might be probative of discrimination." Id., citing Concrete Works v. City & County of Denver, 36 F.3d 1513, 1524 (10th Cir. 1994) (crediting disparity indices ranging from 0% to 3.8%); Contractors Ass'n v. City of Philadelphia, 6 F.3d 990 (3d Cir. 1993) (crediting disparity index of 4%).

After calculation of the disparity indices, the County applied a standard deviation analysis to test the statistical significance of the results. Id. at 914. "The standard deviation figure describes the probability that the measured disparity is the result of mere chance." Id. The Eleventh Circuit had previously recognized "[s]ocial scientists consider a finding of two standard deviations significant, meaning there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor other than chance." Id.

The statistics presented by the County indicated "statistically significant underutilization of BBEs in County construction contracting." Id. at 916. The results were "less dramatic" for HBEs and mixed as between favorable and unfavorable for WBEs. Id.

The Eleventh Circuit then explained the burden of proof:

> [O]nce the proponent of affirmative action introduces its statistical proof as evidence of its remedial purpose, thereby supplying the [district] court with the means for determining that [it] had a firm basis for concluding that remedial action was appropriate, it is incumbent upon the [plaintiff] to prove their case; they continue to bear the ultimate burden of persuading the [district] court that the [defendant's] evidence did not support an inference of prior discrimination and thus a remedial purpose, or that the plan instituted on the basis of this evidence was not sufficiently 'narrowly tailored.'

Id. (internal citations omitted).

The Eleventh Circuit noted that a plaintiff has at least three methods to rebut the inference of discrimination with a "neutral explanation" by: "(1) showing that the statistics are flawed; (2)demonstrating that the disparities shown by the statistics are not significant or actionable; or (3) presenting contrasting statistical data." Id. (internal quotations and citations omitted). The Eleventh Circuit held that the plaintiffs produced "sufficient evidence to establish a neutral explanation for the disparities." Id.

The plaintiffs alleged that the disparities were "better explained by firm size than by discrimination … [because] minority and female-owned firms tend to be smaller, and that it stands to reason smaller firms will win smaller contracts." Id. at 916-17. The plaintiffs produced Census data indicating, on average, minority- and female-owned construction firms in Engineering Contractors Association were smaller than non-MBE/WBE firms. Id. at 917. The Eleventh Circuit found that the plaintiff's explanation of the disparities was a "plausible one, in light of the uncontroverted evidence that MBE/WBE construction firms tend to be substantially smaller than non-MBE/WBE firms." Id.

Additionally, the Eleventh Circuit noted that the County's own expert admitted that "firm size plays a significant role in determining which firms win contracts." Id. The expert stated:

> The size of the firm has got to be a major determinant because of course some firms are going to be larger, are going to be better prepared, are going to be in a greater natural capacity to be able to work on some of the contracts while others simply by virtue of their small size simply would not be able to do it.

Id. The Eleventh Circuit then summarized:

> Because they are bigger, bigger firms have a bigger chance to win bigger contracts. It follows that, all other factors being equal and in a perfectly nondiscriminatory market, one would expect the bigger (on average) non-MBE/WBE firms to get a disproportionately higher percentage of total construction dollars awarded then the smaller MBE/WBE firms. Id.

In an anticipation of such an argument, the County conducted a regression analysis to control for firm size. Id. A regression analysis is "a statistical procedure for determining the relationship between a dependent and independent variable, e.g., the dollar value of a contract award and firm size." Id. (internal citations omitted). The purpose of the regression analysis is "to determine whether the relationship between the two variables is statistically meaningful." Id.

The County's regression analysis sought to identify disparities that could not be explained by firm size, and theoretically instead based on another factor, such as discrimination. Id. The County conducted two regression analyses using two different proxies for firm size: (1) total awarded value of all contracts bid on; and (2) largest single contract awarded. Id. The regression analyses accounted for most of the negative disparities regarding MBE/WBE participation in County construction contracts (i.e. most of the unfavorable disparities became statistically insignificant, corresponding to standard deviation values less that two). Id.

Based on an evaluation of the regression analysis, the district court held that the demonstrated disparities were attributable to firm size as opposed to discrimination. Id. at 918. The district court concluded that the few unexplained disparities that remained after regressing for firm size were insufficient to provide the requisite "strong basis in evidence" of discrimination of BBEs and HBEs. Id. The Eleventh Circuit held that this decision was not clearly erroneous. Id.

With respect to the BBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract between 1989-1991. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

With respect to the HBE statistics, one of the regression methods failed to explain the unfavorable disparity for one type of contract between 1989-1991, and both regression methods failed to explain the unfavorable disparity for another type of contract during that same time period. Id. However, by 1993, both regression methods accounted for all of the unfavorable disparities, and one of the disparities for one type of contract was actually favorable for HBEs. Id. The Eleventh Circuit held the district court permissibly found that this did not constitute a "strong basis in evidence" of discrimination. Id.

Finally, with respect to the WBE statistics, the regression analysis explained all but one negative disparity, for one type of construction contract in the 1993 period. Id. The regression analysis explained all of the other negative disparities, and in the 1993 period, a disparity for one type of contract was actually favorable to WBEs. Id. The Eleventh Circuit held the district court permissibly found that this evidence was not "sufficiently probative of discrimination." Id.

The County argued that the district court erroneously relied on the disaggregated data (*i.e.* broken down by contract type) as opposed to the consolidated statistics. Id. at 919. The district court declined to assign dispositive weight to the aggregated data for the BBE statistics for 1989-1991 because (1) the aggregated data for 1993 did not show negative disparities when regressed for firm size, (2) the BBE disaggregated data left only one unexplained negative disparity for one type of contract for 1989-1991 when regressed for firm size, and (3) "the County's own expert testified as to the utility of examining the disaggregated data 'insofar as they reflect different kinds of work, different bidding practices, perhaps a variety of other factors that could make them heterogeneous with one another." Id.

Additionally, the district court noted, and the Eleventh Circuit found that "the aggregation of disparity statistics for nonheterogenous data populations can give rise to a statistical phenomenon known as 'Simpson's Paradox,' which leads to illusory disparities in improperly aggregated data that disappear when the data are disaggregated." Id. at 919, n. 4 (internal citations omitted). "Under those circumstances," the Eleventh Circuit held that the district court did not err in assigning less weight to the aggregated data, in finding the aggregated data for BBEs for 1989-1991 did not provide a "strong basis in evidence" of discrimination, or in finding that the disaggregated data formed an insufficient basis of support for any of the MBE/WBE programs given the applicable constitutional requirements. Id. at 919.

**County subcontracting statistics.** The County performed a subcontracting study to measure MBE/WBE participation in the County's subcontracting businesses. For each MBE/WBE category (BBE, HBE, and WBE), "the study compared the proportion of the designated group that filed a subcontractor's release of lien on a County construction project between 1991 and 1994 with the proportion of sales and receipt dollars that the same group received during the same time period." Id.

The district court found the statistical evidence insufficient to support the use of race- and ethnicity-conscious measures, noting problems with some of the data measures. Id. at 920.

> Most notably, the denominator used in the calculation of the MBE/WBE sales and receipts percentages is based upon the total sales and receipts *from all sources* for the firm filing a subcontractor's release of lien with the County. That means, for instance, that if a nationwide non-MBE/WBE company performing 99 percent of its business outside of Dade County filed a single subcontractor's release of lien with the County during the relevant time frame, *all* of its sales and receipts for that time frame would be counted in the denominator against which MBE/WBE sales and receipts are compared. As the district court pointed out, that is not a reasonable way to measure Dade County subcontracting participation.

Id. The County's argument that a strong majority (72%) of the subcontractors were located in Dade County did not render the district court's decision to fail to credit the study erroneous. Id.

**Marketplace data statistics.** The County conducted another statistical study "to see what the differences are in the marketplace and what the relationships are in the marketplace." Id. The study was based on a sample of 568 contractors, from a pool of 10,462 firms, that had filed a "certificate of competency" with Dade County as of January 1995. Id. The selected firms participated in a telephone survey inquiring about the race, ethnicity, and gender of the firm's owner, and asked for information on the firm's total sales and receipts from all sources. Id. The County's expert then studied the data to determine "whether meaningful relationships existed between (1) the race, ethnicity, and gender of the surveyed firm owners, and (2) the reported sales and receipts of that firm. Id. The expert's hypothesis was that unfavorable disparities may be attributable to marketplace discrimination. The expert performed a regression analysis using the number of employees as a proxy for size. Id.

The Eleventh Circuit first noted that the statistical pool used by the County was substantially larger than the actual number of firms, willing, able, and qualified to do the work as the statistical pool represented all those firms merely licensed as a construction contractor. Id. Although this factor did

not render the study meaningless, the district court was entitled to consider that in evaluating the weight of the study. Id. at 921. The Eleventh Circuit quoted the Supreme Court for the following proposition: "[w]hen special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value." Id., quoting Croson, 488 U.S. at 501, quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 308 n. 13 (1977).

The Eleventh Circuit found that after regressing for firm size, neither the BBE nor WBE data showed statistically significant unfavorable disparities. Id. Although the marketplace data did reveal unfavorable disparities even after a regression analysis, the district court was not required to assign those disparities controlling weight, especially in light of the dissimilar results of the County Contracting Statistics, discussed supra. Id.

**The Wainwright study.** The County also introduced a statistical analysis prepared by Jon Wainwright, analyzing "the personal and financial characteristics of self-employed persons working full-time in the Dade County construction industry, based on data from the 1990 Public Use Microdata Sample database" (derived from the decennial census). Id. The study "(1) compared construction business ownership rates of MBE/WBEs to those of non-MBE/WBEs, and (2) analyzed disparities in personal income between MBE/WBE and non-MBE/WBE business owners." Id. "The study concluded that blacks, Hispanics, and women are less likely to own construction businesses than similarly situated white males, and MBE/WBEs that do enter the construction business earn less money than similarly situated white males." Id.

With respect to the first conclusion, Wainwright controlled for "human capital" variables (education, years of labor market experience, marital status, and English proficiency) and "financial capital" variables (interest and dividend income, and home ownership). Id. The analysis indicated that blacks, Hispanics and women enter the construction business at lower rates than would be expected, once numerosity, and identified human and financial capital are controlled for. Id. The disparities for blacks and women (but not Hispanics), were substantial and statistically significant. Id. at 922. The underlying theory of this business ownership component of the study is that any significant disparities remaining after control of variables are due to the ongoing effects of past and present discrimination. Id.

The Eleventh Circuit held, in light of Croson, the district court need not have accepted this theory. Id. The Eleventh Circuit quoted Croson, in which the Supreme Court responded to a similar argument advanced by the plaintiffs in that case: "There are numerous explanations for this dearth of minority participation, including past societal discrimination in education and economic opportunities *as well as both black and white career and entrepreneurial choices. Blacks may be disproportionately attracted to industries other than construction.*" Id., quoting Croson, 488 U.S. at 503. Following the Supreme Court in Croson, the Eleventh Circuit held "the disproportionate attraction of a minority group to non-construction industries does not mean that discrimination in the construction industry is the reason." Id., quoting Croson, 488 U.S. at 503. Additionally, the district court had evidence that between 1982 and 1987, there was a substantial growth rate of MBE/WBE firms as opposed to non-MBE/WBE firms, which would further negate the proposition that the construction industry was discriminating against minority- and women-owned firms. Id. at 922.

With respect to the personal income component of the Wainwright study, after regression analyses were conducted, only the BBE statistics indicated a statistically significant disparity ratio. Id. at 923. However, the Eleventh Circuit held the district court was not required to assign the disparity controlling weight because the study did not regress for firm size, and in light of the conflicting statistical evidence in the County Contracting Statistics and Marketplace Data Statistics, discussed supra, which did regress for firm size. Id.

**The Brimmer study.** The final study presented by the County was conducted under the supervision of Dr. Andrew F. Brimmer and concerned only black-owned firms. Id. The key component of the study was an analysis of the business receipts of black-owned construction firms for the years of 1977, 1982 and 1987, based on the Census Bureau's Survey of Minority and Women Owned Businesses, produced every five years. Id. The study sought to determine the existence of disparities between sales and receipts of black-owned firms in Dade County compared to the sales and receipts of all construction firms in Dade County. Id.

The study indicated substantial disparities in 1977 and 1987 but not1982. Id. The County alleged that the absence of disparity in 1982 was due to substantial race-conscious measures for a major construction contract (Metrorail project), and not due to a lack of discrimination in the industry. Id. However, the study made no attempt to filter for the Metrorail project and "complete[ly] fail[ed]" to account for firm size. Id. Accordingly, the Eleventh Circuit found the district court permissibly discounted the results of the Brimmer study. Id. at 924.

**The non-statistical "anecdotal" evidence.** In addition, the County presented a substantial amount of anecdotal evidence of perceived discrimination against BBEs, a small amount of similar anecdotal evidence pertaining to WBEs, and no anecdotal evidence pertaining to HBEs. Id. The County presented three basic forms of anecdotal evidence: "(1) the testimony of two County employees responsible for administering the MBE/WBE programs; (2) the testimony, primarily by affidavit, of twenty-three MBE/WBE contractors and subcontractors; and (3) a survey of black-owned construction firms." Id.

The County employees testified that the decentralized structure of the County construction contracting system affords great discretion to County employees, which in turn creates the opportunity for discrimination to infect the system. Id. They also testified to specific incidents of discrimination, for example, that MBE/WBEs complained of receiving lengthier punch lists than their non-MBE/WBE counterparts. Id. They also testified that MBE/WBEs encounter difficulties in obtaining bonding and financing. Id.

The MBE/WBE contractors and subcontractors testified to numerous incidents of perceived discrimination in the Dade County construction market, including:

> Situations in which a project foreman would refuse to deal directly with a black or female firm owner, instead preferring to deal with a white employee; instances in which an MBE/WBE owner knew itself to be the low bidder on a subcontracting project, but was not awarded the job; instances in which a low bid by an MBE/WBE was "shopped" to solicit even lower bids from non-MBE/WBE firms; instances in which an MBE/WBE owner received an invitation to bid on a subcontract within a day of the bid due date, together with a "letter of unavailability" for the MBE/WBE

> owner to sign in order to obtain a waiver from the County; and instances in which an MBE/WBE subcontractor was hired by a prime contractor, but subsequently was replaced with a non-MBE/WBE subcontractor within days of starting work on the project. Id. at 924-25.

Finally, the County submitted a study prepared by Dr. Joe E. Feagin, comprised of interviews of 78 certified black-owned construction firms. Id. at 925. The interviewees reported similar instances of perceived discrimination, including: "difficulty in securing bonding and financing; slow payment by general contractors; unfair performance evaluations that were tainted by racial stereotypes; difficulty in obtaining information from the County on contracting processes; and higher prices on equipment and supplies than were being charged to non-MBE/WBE firms." Id.

The Eleventh Circuit found that numerous black- and some female-owned construction firms in Dade County perceived that they were the victims of discrimination and two County employees also believed that discrimination could taint the County's construction contracting process. Id. However, such anecdotal evidence is helpful "only when it [is] combined with and reinforced by sufficiently probative statistical evidence." Id. In her plurality opinion in Croson, Justice O'Connor found that "evidence of a pattern of individual discriminatory acts can, *if supported by appropriate statistical proof*, lend support to a local government's determination that broader remedial relief is justified." Id., quoting Croson, 488 U.S. at 509 (emphasis added by the Eleventh Circuit). Accordingly, the Eleventh Circuit held that "anecdotal evidence can play an important role in bolstering statistical evidence, but that only in the rare case will anecdotal evidence suffice standing alone." Id. at 925. The Eleventh Circuit also cited to opinions from the Third, Ninth and Tenth Circuits as supporting the same proposition. Id. at 926. The Eleventh Circuit affirmed the decision of the district court enjoining the continued operation of the MBE/WBE programs because they did not rest on a "constitutionally sufficient evidentiary foundation." Id.

Although the Eleventh Circuit determined that the MBE/WBE program did not survive constitutional muster due to the absence of a sufficient evidentiary foundation, the Eleventh Circuit proceeded with the second prong of the strict scrutiny analysis of determining whether the MBE/WBE programs were narrowly tailored (BBE and HBE programs) or substantially related (WBE program) to the legitimate government interest they purported to serve, i.e. "remedying the effects of present and past discrimination against blacks, Hispanics, and women in the Dade County construction market." Id.

**Narrow tailoring.** "The essence of the 'narrowly tailored' inquiry is the notion that explicitly racial preferences … must only be a 'last resort' option." Id., quoting Hayes v. North Side Law Enforcement Officers Ass'n, 10 F.3d 207, 217 (4th Cir. 1993) and citing Croson, 488 U.S. at 519 (Kennedy, J., concurring in part and concurring in the judgment) ("[T]he strict scrutiny standard … forbids the use of even narrowly drawn racial classifications except as a last resort.").

The Eleventh Circuit has identified four factors to evaluate whether a race- or ethnicity-conscious affirmative action program is narrowly tailored: (1) "the necessity for the relief and the efficacy of alternative remedies; (2) the flexibility and duration of the relief; (3) the relationship of numerical goals to the relevant labor market; and (4) the impact of the relief on the rights of innocent third parties." Id. at 927, citing Ensley Branch, 31 F.3d at 1569.

The four factors provide "a useful analytical structure." Id. at 927. The Eleventh Circuit focused only on the first factor in the present case "because that is where the County's MBE/WBE programs are most problematic." Id.

> The Eleventh Circuit flatly reject[ed] the County's assertion that 'given a strong basis in evidence of a race-based problem, a race-based remedy is necessary.' That is simply not the law. If a race-neutral remedy is sufficient to cure a race-based problem, then a race-conscious remedy can never be narrowly tailored to that problem." Id., citing Croson, 488 U.S. at 507 (holding that affirmative action program was not narrowly tailored where "there does not appear to have been any consideration of the use of race-neutral means to increase minority business participation in city contracting") … Supreme Court decisions teach that a race-conscious remedy is not merely one of many equally acceptable medications the government may use to treat a race-based problem. Instead, it is the strongest of medicines, with many potential side effects, and must be reserved for those severe cases that are highly resistant to conventional treatment. Id. at 927.

The Eleventh Circuit held that the County "clearly failed to give serious and good faith consideration to the use of race- and ethnicity-neutral measures." Id. Rather, the determination of the necessity to establish the MBE/WBE programs was based upon a conclusory legislative statement as to its necessity, which in turn was based upon an "equally conclusory analysis" in the Brimmer study, and a report that the SBA only was able to direct 5 percent of SBA financing to black-owned businesses between 1968-1980. Id.

The County admitted, and the Eleventh Circuit concluded, that the County failed to give any consideration to any alternative to the HBE affirmative action program. Id. at 928. Moreover, the Eleventh Circuit found that the testimony of the County's own witnesses indicated the viability of race- and ethnicity-neutral measures to remedy many of the problems facing black- and Hispanic-owned construction firms. Id. The County employees identified problems, virtually all of which were related to the County's own processes and procedures, including: "the decentralized County contracting system, which affords a high level of discretion to County employees; the complexity of County contract specifications; difficulty in obtaining bonding; difficulty in obtaining financing; unnecessary bid restrictions; inefficient payment procedures; and insufficient or inefficient exchange of information." Id. The Eleventh Circuit found that the problems facing MBE/WBE contractors were "institutional barriers" to entry facing every new entrant into the construction market, and were perhaps affecting the MBE/WBE contractors disproportionately due to the "institutional youth" of black- and Hispanic-owned construction firms. Id. "It follows that those firms should be helped the most by dismantling those barriers, something the County could do at least in substantial part." Id.

The Eleventh Circuit noted that the race- and ethnicity-neutral options available to the County mirrored those available and cited by Justice O'Connor in Croson:

> [T]he city has at its disposal a whole array of race-neutral measures to increase the accessibility of city contracting opportunities to small entrepreneurs of all races. Simplification of bidding procedures, relaxation of bonding requirements, and training and financial aid for disadvantaged entrepreneurs of all races would open the public contracting market to all those who have suffered the effects of past

> societal discrimination and neglect … The city may also act to prohibit discrimination in the provision of credit or bonding by local suppliers and banks.

Id., quoting Croson, 488 U.S. at 509-10. The Eleventh Circuit found that except for some "half-hearted programs" consisting of "limited technical and financial aid that might benefit BBEs and HBEs," the County had not "seriously considered" or tried most of the race- and ethnicity-neutral alternatives available. Id. at 928. "Most notably … the County has not taken any action whatsoever to ferret out and respond to instances of discrimination if and when they have occurred in the County's own contracting process." Id.

The Eleventh Circuit found that the County had taken no steps to "inform, educate, discipline, or penalize" discriminatory misconduct by its own employees. Id. at 929. Nor had the County passed any local ordinances expressly prohibiting discrimination by local contractors, subcontractors, suppliers, bankers, or insurers. Id. "Instead of turning to race- and ethnicity-conscious remedies as a last resort, the County has turned to them as a first resort." Accordingly, the Eleventh Circuit held that even if the BBE and HBE programs were supported by the requisite evidentiary foundation, they violated the Equal Protection Clause because they were not narrowly tailored. Id.

**Substantial relationship.** The Eleventh Circuit held that due to the relaxed "substantial relationship" standard for gender-conscious programs, if the WBE program rested upon a sufficient evidentiary foundation, it could pass the substantial relationship requirement. Id. However, because it did not rest upon a sufficient evidentiary foundation, the WBE program could not pass constitutional muster. Id.

For all of the foregoing reasons, the Eleventh Circuit affirmed the decision of the district court declaring the MBE/WBE programs unconstitutional and enjoining their continued operation.

### 10. Contractors Ass'n of E. Pa. v. City of Philadelphia, 91 F.3d 586 (3d Cir. 1996)

This case is instructive to the Consortium and the disparity study as it shows how courts may find a program invalid regardless of whether it has a compelling interest to remedy discrimination, if the program is not narrowly tailored. In this case, after examining the statistical and anecdotal evidence, the trial court held that the City of Philadelphia had failed to show a strong basis in evidence and therefore had no compelling governmental interest for its program. The trial court also determined that the ordinance was not narrowly tailored.

On appeal, the Third Circuit declined to determine whether the government had a compelling interest, and did not address the statistical or anecdotal evidence. The court found the ordinance unconstitutional because it was not narrowly tailored. This holding was based on the court's conclusion the ordinance had goals for subcontractor participation without any evidence of discrimination and any analysis of or evidence concerning subcontractor data.

### 11. Thomas v. City of Saint Paul, 526 F. Supp. 2d 959 (D. Minn 2007), affirmed, 2009 WL 777932 (8th Cir. March 26, 2009) (unpublished opinion)

In Thomas v. City of Saint Paul, the plaintiffs are African American business owners who brought this lawsuit claiming that the City of Saint Paul, Minnesota discriminated against them in awarding publicly-funded contracts. The City moved for summary judgment, which the United States District Court granted and issued an order dismissing the plaintiff's lawsuit in December 2007. The order of

the United District Court has been appealed by the plaintiffs to the Eighth Circuit Court of Appeals, which appeal is pending at the time of this publication.

The background of the case involves the adoption by the City of Saint Paul of a Vendor Outreach Program (the "VOP") that was designed to assist minority and other small business owners in competing for City contracts. Plaintiffs were VOP-certified minority business owners. Plaintiffs contend that the City engaged in racially discriminatory illegal conduct in awarding City contracts for publicly-funded projects. Plaintiff Thomas claims that the City denied him opportunities to work on projects because of his race arguing that the City failed to invite him to bid on certain projects, the City failed to award him contracts and the fact independent developers have not contracted with his company. 526 F. Supp. 2d at 962. The City contended that Thomas was provided opportunities to bid for the City's work.

Plaintiff Brian Conover owned a trucking firm, and he claimed that none of his bids on 22 different projects to various independent developers was accepted as a subcontractor. 526 F. Supp. 2d at 962. The court found that after years of discovery, Plaintiff Conover offered no admissible evidence to support his claim, had not identified the subcontractors whose bids were accepted, and did not offer any comparison showing the accepted bid and the bid he submitted. Id. Plaintiff Conover also complained that he received bidding invitations only a few days before a bid was due not allowing him adequate time to prepare a competitive bid. Id. The court found, however, he failed to identify any particular project that he had only a single day of bid, and did not identify any person of any race similarly situated who was afforded a longer period of time in which to submit a bid. Id. at 963. Plaintiff Newell claimed he submitted numerous bids on the City's projects all of which were rejected. Id. The court found, however, that he provided no specifics about why he did not receive the work. Id.

**The VOP.** Under the VOP, the City sets annual bench marks or levels of participation for the targeted minorities groups. Id. at 963. The VOP prohibits quotas and imposes various "good faith" requirements on prime contractors who bid for City projects. Id. at 964. In particular, the VOP requires that when a prime contractor rejects a bid from a VOP-certified business, the contractor must give the City its basis for the rejection, and evidence that the rejection was justified. Id. The VOP further imposes obligations on the City with respect to vendor contracts. Id. The court found the City must seek where possible and lawful to award a portion of vendor contracts to VOP certified businesses. Id. The City contract manager must solicit these bids by phone, advertisement in a local newspaper or other means. Where applicable, the contract manager may assist interested VOP participants in obtaining bonds, lines of credit or insurance required to perform under the contract. Id. The VOP ordinance provides that when the contract manager engages in one or more possible outreach efforts, he or she is in compliance with the ordinance. Id.

**Analysis and Order of the Court.** The district court found that the City is entitled to summary judgment because plaintiffs lack standing to bring these claims and that no genuine issue of material fact remains. Id. at 965. The court held that the plaintiffs had no standing to challenge the VOP because they failed to show they were deprived of an opportunity to compete, or that their inability to obtain any contract resulted from an act of discrimination. Id. The court found they failed to show any instance in which their race was a determinant in the denial of any contract. Id. at 966. As a result, the court held plaintiffs failed to demonstrate the City engaged in discriminatory conduct or policy which prevented plaintiffs from competing. Id. at 965-966.

The court held that in the absence of any showing of intentional discrimination based on race, the mere fact the City did not award any contracts to plaintiffs does not furnish that causal nexus necessary to establish standing. Id. at 966. The court held the law does not require the City to voluntarily adopt "aggressive race-based affirmative action programs" in order to award specific groups publicly-funded contracts. Id. at 966. The court found that plaintiffs had failed to show a violation of the VOP ordinance, or any illegal policy or action on the part of the City. Id.

The court stated that the plaintiffs must identify a discriminatory policy in effect. Id. at 966. The court noted, for example, even assuming the City failed to give plaintiffs more than one day's notice to enter a bid, such a failure is not, per se, illegal. Id. The court found the plaintiffs offered no evidence that anyone else of any other race received an earlier notice, or that he was given this allegedly tardy notice as a result of his race. Id.

The court concluded that even if plaintiffs may not have been hired as a subcontractor to work for prime contractors receiving City contracts, these were independent developers and the City is not required to defend the alleged bad acts of others. Id. Therefore, the court held plaintiffs had no standing to challenge the VOP. Id. at 966.

**Plaintiffs' claims**. The court found that even assuming plaintiffs possessed standing, they failed to establish facts which demonstrated a need for a trial, primarily because each theory of recovery is viable only if the City "intentionally" treated plaintiffs unfavorably because of their race. Id. at 967. The court held to establish a prima facie violation of the equal protection clause, there must be state action. Id. Plaintiffs must offer facts and evidence that constitute proof of "racially discriminatory intent or purpose." Id. at 967. Here, the court found that plaintiff failed to allege any single instance showing the City "intentionally" rejected VOP bids based on their race. Id.

Court also found that plaintiffs offered no evidence of a specific time when any one of them submitted the lowest bid for a contract or a subcontract, or showed any case where their bids were rejected on the basis of race. Id. The court held the alleged failure to place minority contractors in a preferred position, without more, is insufficient to support a finding that the City failed to treat them equally based upon their race. Id.

The City rejected the plaintiffs' claims of discrimination because the plaintiffs did not establish by evidence that the City "intentionally" rejected their bid due to race or that the City "intentionally" discriminated against these plaintiffs. Id. at 967-968. The court held that the plaintiffs did not establish a single instance showing the City deprived them of their rights, and the plaintiffs did not produce evidence of a "discriminatory motive." Id. at 968. The court concluded that plaintiffs had failed to show that the City's actions were "racially motivated." Id.

The Eight Circuit Court of Appeals recently affirmed the ruling of the District Court. Thomas v. City of Saint Paul, 2009 WL 777932 (8th Cir. March 26, 2009)(unpublished opinion). The Eighth Circuit affirmed based on the decision of the District Court and finding no reversible error.

### 12. Florida A.G.C. Council, Inc. v. State of Florida, 303 F. Supp. 2d 1307 (N.D. Fla. 2004)

This case is instructive to the Consortium and the disparity study as to the manner in which district courts within the Eleventh Circuit are interpreting and applying Engineering Contractors Association. It is also instructive in terms of the type of legislation to be considered by the

Consortium as to what the courts consider to be a "race-conscious" program and/or legislation, as well as to the significance of the implementation of the legislation to the analysis.

The plaintiffs, A.G.C. Council, Inc. and the South Florida Chapter of the Associated General Contractors brought this case challenging the constitutionality of certain provisions of a Florida statute (Section 287.09451, *et seq.*). The plaintiffs contended that the statute violated the Equal Protection Clause of the Fourteenth Amendment by instituting race- and gender-conscious "preferences" in order to increase the numeric representation of minority business enterprises ("MBEs") in certain industries.

According to the court, the Florida Statute enacted race-conscious and gender-conscious remedial programs to ensure minority participation in state contracts for the purchase of commodities and in construction contracts. The state created the Office of Supplier Diversity ("OSD") to assist MBEs to become suppliers of commodities, services and construction to the State government. The OSD had certain responsibilities, including adopting rules meant to assess whether state agencies have made good faith efforts to solicit business from MBEs, and to monitor whether contractors have made good faith efforts to comply with the objective of greater overall MBE participation.

The statute enumerated measures that contractors should undertake, such as minority-centered recruitment in advertising as a means of advancing the statute's purpose. The statute provided that each state agency is "encouraged" to spend 21 percent of the monies actually expended for construction contracts, 25 percent of the monies actually expended for architectural and engineering contracts, 24 percent of the monies actually expended for commodities and 50.5 percent of the monies actually expended for contractual services during the fiscal year for the purpose of entering into contracts with certified MBEs. The statute also provided that state agencies are allowed to allocate certain percentages for black Americans, Hispanic Americans and for American women, and the goals are broken down by construction contracts, architectural and engineering contracts, commodities and contractual services.

The State took the position that the spending goals were "precatory." The court found that the plaintiffs had standing to maintain the action and to pursue prospective relief. The court held that the statute was unconstitutional based on the finding that the spending goals were not narrowly tailored to achieve a governmental interest. The court did not specifically address whether the articulated reasons for the goals contained in the statute had sufficient evidence, but instead found that the articulated reason would, "if true," constitute a compelling governmental interest necessitating race-conscious remedies. Rather than explore the evidence, the court focused on the narrowly tailored requirement and held that it was not satisfied by the State.

The court found that there was no evidence in the record that the State contemplated race-neutral means to accomplish the objectives set forth in Section 287.09451 *et seq.*, such as "'simplification of bidding procedures, relaxation of bonding requirements, training of financial aid for disadvantaged entrepreneurs of all races [which] would open the public contracting market to all those who have suffered the effects of past discrimination.'" Florida A.G.C. Council, 303 F.Supp.2d at 1315, quoting Eng'g Contractors Ass'n, 122 F.3d at 928, quoting Croson, 488 U.S. at 509-10.

The court noted that defendants did not seem to disagree with the report issued by the State of Florida Senate that concluded there was little evidence to support the spending goals outlined in the

statute. Rather, the State of Florida argued that the statute is "permissive." The court, however, held that "there is no distinction between a statute that is precatory versus one that is compulsory when the challenged statute 'induces an employer to hire with an eye toward meeting … [a] numerical target.' Florida A.G.C. Council, 303 F.Supp.2d at 1316.

The court found that the State applies pressure to State agencies to meet the legislative objectives of the statute extending beyond simple outreach efforts. The State agencies, according to the court, were required to coordinate their MBE procurement activities with the OSD, which includes adopting a MBE utilization plan. If the State agency deviated from the Utilization Plan in two consecutive and three out of five total fiscal years, then the OSD could review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency met its utilization plan. The court held that based on these factors, although alleged to be "permissive," the statute textually was not.

Therefore, the court found that the statute was not narrowly tailored to serve a compelling governmental interest, and consequently violated the Equal Protection Clause of the Fourteenth Amendment.

### 13. Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County, 333 F. Supp. 2d 1305 (S.D. Fla. 2004)

The recent decision in Hershell Gill Consulting Engineers, Inc. v. Miami-Engineering Contractors Association, is significant to the Consortium and the disparity study because it applied and followed the Engineering Contractors Association decision in the context of contracting and procurement for goods and services (including architect and engineer services). Many of the other cases focused on construction, and thus Hershell Gill is instructive as to the analysis relating to architect and engineering services. The decision in Hershell Gill also involved a district court in the Eleventh Circuit imposing compensatory and punitive damages upon individual County Commissioners due to the district court's finding of their willful failure to abrogate an unconstitutional MBE/WBE program. In addition, the case is noteworthy because the district court refused to follow the 2003 Tenth Circuit Court of Appeals decision in Concrete Works of Colorado, Inc. v. City and County of Denver, 321 .3d 950 (10th Cir. 2003). See discussion, infra.

Six years after the decision in Engineering Contractors Association, two white male-owned engineering firms (the "plaintiffs") brought suit against Engineering Contractors Association (the "County"), the former County Manager, and various current County Commissioners (the "Commissioners") in their official and personal capacities (collectively the "defendants"), seeking to enjoin the same "participation goals" in the same MBE/WBE program deemed to violate the Fourteenth Amendment in the earlier case. 333 F. Supp. 1305, 1310 (S.D. Fla. 2004). After the Eleventh Circuit's decision in Engineering Contractors Association striking down the MBE/WBE programs as applied to construction contracts, the County enacted a Community Small Business Enterprise (CSBE) program for construction contracts, "but continued to apply racial, ethnic, and gender criteria to its purchases of goods and services in other areas, including its procurement of A&E services." Id. at 1311.

The plaintiffs brought suit challenging the Black Business Enterprise (BBE) program, the Hispanic Business Enterprise (HBE) program, and the Women Business Enterprise (WBE) program (collectively "MWBE"). Id. The MWBE programs applied to A&E contracts in excess of $25,000.

Id. at 1312. The County established five "contract measures" to reach the participation goals: (1) set asides, (2) subcontractor goals, (3) project goals, (4) bid preferences, and (5) selection factors. Id. Once a contract was identified as covered by a participation goal, a review committee would determine whether a contract measure should be utilized. Id. The County was required to review the efficacy of the MBE/WBE programs annually, and reevaluated the continuing viability of the MWBE programs every five years. Id. at 1313. However, the district court found "the participation goals for the three MWBE programs challenged … remained unchanged since 1994." Id.

In 1998, counsel for plaintiffs contacted the County Commissioners requesting the discontinuation of contract measures on A&E contracts. Id. at 1314. Upon request of the Commissioners, the County manager then made two reports (an original and a follow-up) measuring parity in terms of dollars awarded and dollars paid in the areas of A&E for blacks, Hispanics, and women, and concluded both times that the "County has reached parity for Black, Hispanic, and Women-owned firms in the areas of [A&E] services." The final report further stated "Based on all the analyses that have been performed, the County does not have a basis for the establishment of participation goals which would allow staff to apply contract measures." Id. at 1315. The district court also found that the Commissioners were informed that "there was even less evidence to support [the MWBE] programs as applied to architects and engineers then there was in contract construction." Id. Nonetheless, the Commissioners voted to continue the MBE/WBE participation goals at their previous levels. Id.

In May of 2000 (18 months after the lawsuit was filed), the County commissioned Dr. Manuel J. Carvajal, and econometrician, to study architects and engineers in the County. His final report had four parts:

> (1) data identification and collection of methodology for displaying the research results; (2) presentation and discussion of tables pertaining to architecture, civil engineering, structural engineering, and awards of contracts in those areas; (3) analysis of the structure and empirical estimates of various sets of regression equations, the calculation of corresponding indices, and an assessment of their importance; and (4) a conclusion that there is discrimination against women and Hispanics – but not against blacks – in the fields of architecture and engineering. Id.

The district court issued a preliminary injunction enjoining the use of the MWBE programs for A&E contracts, pending the United States Supreme Court decisions in Gratz v. Bollinger, 539 U.S. 244 (2003) and Grutter v. Bollinger, 539 U.S. 306 (2003). Id. at 1316.

The court considered whether the MWBE programs were violative of Title VII of the Civil Rights Act, and whether the County and the County Commissioners were liable for compensatory and punitive damages.

The district court found that the Supreme Court decisions in Gratz and Grutter did not alter the constitutional analysis as set forth in Adarand and Croson. Id. at 1317. Accordingly, the race- and ethnicity-based classifications were subject to strict scrutiny, meaning the County must present "a strong basis of evidence" indicating the MWBE program was necessary and that it was narrowly tailored to its purported purpose. Id. at 1316. The gender-based classifications were subject to intermediate scrutiny, requiring the County to show the "gender-based classification serves an

important governmental objective, and that it is substantially related to the achievement of that objective." Id. at 1317 (internal citations omitted). The court found that the proponent of a gender-based affirmative action program must present "sufficient probative evidence" of discrimination. Id. (internal citations omitted). The court found importantly, that under the intermediate scrutiny analysis, the County must (1) demonstrate past discrimination against women but not necessarily at the hands of the County, and (2) the gender-conscious affirmative action program need not be used only as a "last resort." Id.

The County presented both statistical and anecdotal evidence. Id. at 1318. The statistical evidence consisted of Dr. Carvajal's report, most of which consisted of "post-enactment" evidence. Id. Dr. Carvajal's analysis sought to discover the existence of racial, ethnic and gender disparities in A&E, and then to determine whether any such disparities could be attributed to discrimination. Id. The study used four data sets: three were designed to establish the marketplace availability of firms (architecture, structural engineering, and civil engineering), and the fourth focused on awards issued by the County. Id. Dr. Carvajal used the phone book, a list compiled by infoUSA, and a list of firms registered for technical certification with the County's Department of Public Works to compile a list of the "universe" of firms competing in the market. Id. For the architectural firms only, he also used a list of firms that had been issued an architecture professional license. Id.

Dr. Carvajal then conducted a phone survey of the identified firms. Based on his data, Dr. Carvajal concluded that disparities existed between the percentage of A&E firms owned by blacks, Hispanics, and women, and the percentage of annual business they received. Id. Dr. Carvajal conducted regression analyses "in order to determine the effect a firm owner's gender or race had on certain dependent variables." Id. Dr. Carvajal used the firm's annual volume of business as a dependent variable and determined the disparities were due in each case to the firm's gender and/or ethnic classification. Id. at 1320. He also performed variants to the equations including: (1) using certification rather than survey data for the experience / capacity indicators, (2) with the outliers deleted, (3) with publicly owned firms deleted, (4) with the dummy variables reversed, and (5) using only currently certified firms." Id. Dr. Carvajal's results remained substantially unchanged. Id.

Based on his analysis of the marketplace data, Dr. Carvajal concluded that the "gross statistical disparities" in the annual business volume for Hispanic- and women-owned firms could be attributed to discrimination; he "did not find sufficient evidence of discrimination against blacks." Id.

The court held that Dr. Carvajal's study constituted neither a "strong basis in evidence" of discrimination necessary to justify race- and ethnicity-conscious measures, nor did it constitute "sufficient probative evidence" necessary to justify the gender-conscious measures. Id. The court made an initial finding that no disparity existed to indicate underutilization of MBE/WBEs in the award of A&E contracts by the County, nor was there underutilization of MBE/WBEs in the contracts they were awarded. Id. The court found that an analysis of the award data indicated, "[i]f anything, the data indicates an overutilization of minority-owned firms by the County in relation to their numbers in the marketplace." Id.

With respect to the marketplace data, the County conceded that there was insufficient evidence of discrimination against blacks to support the BBE program. Id. at 1321. With respect to the marketplace data for Hispanics and women, the court found it "unreliable and inaccurate" for three

reasons: (1) the data failed to properly measure the geographic market, (2) the data failed to properly measure the product market, and (3) the marketplace data survey was unreliable. Id. at 1321-25.

The court ruled that it would not follow the Tenth Circuit decision of Concrete Works of Colorado, Inc. v. City and County of Denver, 321 F.3d 950 (10th Cir. 2003), as the burden of proof enunciated by the Tenth Circuit conflicts with that of the Eleventh Circuit, and the "Tenth Circuit's decision is flawed for the reasons articulated by Justice Scalia in his dissent from the denial of certiorari." Id. at 1325 (internal citations omitted).

The defendant intervenors presented anecdotal evidence pertaining only to discrimination against women in the County's A&E industry. Id. The anecdotal evidence consisted of the testimony of three A&E professional women, "nearly all" of which was related to discrimination in the award of County contracts. Id. at 1326. However, the district court found that the anecdotal evidence contradicted Dr. Carvajal's study indicating that no disparity existed with respect to the award of County A&E contracts. Id.

The court quoted the Eleventh Circuit in Engineering Contractors Association for the proposition "that only in the rare case will anecdotal evidence suffice standing alone." Id. (internal citations omitted). The court held that "[t]his is not one of those rare cases." The district court concluded that the statistical evidence was "unreliable and fail[ed] to establish the existence of discrimination," and the anecdotal evidence was insufficient as it did not even reach the level of anecdotal evidence in Engineering Contractors Association where the County employees themselves testified. Id.

The court made an initial finding that a number of minorities provided preferential treatment were in fact majorities in the County in terms of population, voting capacity, and representation on the County Commission. Id. at 1326-1329. For purposes only of conducting the strict scrutiny analysis, the court then assumed that Dr. Carvajal's report demonstrated discrimination against Hispanics (note the County had conceded it had insufficient evidence of discrimination against blacks) and sought to determine whether the HBE program was narrowly tailored to remedying that discrimination. Id. at 1330. However, the court found that because the study failed to "identify who is engaging in the discrimination, what form the discrimination might take, at what stage in the process it is taking place, or how the discrimination is accomplished … it is virtually impossible to narrowly tailor any remedy, and the HBE program fails on this fact alone." Id.

The court found that even after the County Managers informed the Commissioners that the County had reached parity in the A&E industry, the Commissioner declined to enact a CSBE ordinance, a race-neutral measure utilized in the construction industry after Engineering Contractors Association. Id. Instead, the Commissioners voted to continue the HBE program. Id. The court held that the County's failure to even explore a program similar to the CSBE ordinance indicated that the HBE program was not narrowly tailored. Id. at 1331.

The court also found that the County enacted a broad anti-discrimination ordinance imposing harsh penalties for a violation thereof. Id. However, "not a single witness at trial knew of any instance of a complaint being brought under this ordinance concerning the A&E industry," leading the court to conclude that the ordinance was either not being enforced, or no discrimination existed. Id. Under either scenario, the HBE could not be narrowly tailored. Id.

The court found the waiver provisions in the HBE inflexible in practice. Id. Additionally, the court found the County had failed to comply with the provisions in the HBE requiring adjustment of participation goals based on annual studies, because the County had not in fact conducted annual studies for several years. Id. The court found this even "more problematic" because the HBE program did not have a built-in durational limit, and thus blatantly violated Supreme Court jurisprudence requiring that racial and ethnic preferences "must be limited in time." Id. at 1332, citing Grutter, 123 S. Ct. at 2346. For the foregoing reasons, the court concluded the HBE program was not narrowly tailored. Id. at 1332.

With respect to the WBE program, the court found that "the failure of the County to identify who is discriminating and where in the process the discrimination is taking place indicates (though not conclusively) that the WBE program is not substantially related to eliminating that discrimination." Id. at 1333. The court found that the existence of the anti-discrimination ordinance, the refusal to enact a small business enterprise ordinance, and the inflexibility in setting the participation goals rendered the WBE unable to satisfy the substantial relationship test. Id.

The court held that the County was liable for any compensatory damages. Id. at 1333-34. The court held that the Commissioners had absolute immunity for their legislative actions; however, they were not entitled to qualified immunity for their actions in voting to apply the race-, ethnicity-, and gender-conscious measures of the MWBE programs if their actions violated "clearly established statutory or constitutional rights of which a reasonable person would have known … Accordingly, the question is whether the state of the law at the time the Commissioners voted to apply [race-, ethnicity-, and gender-conscious measures] gave them 'fair warning' that their actions were unconstitutional. " Id. at 1335-36 (internal citations omitted).

The court held that the Commissioners were not entitled to qualified immunity because they "had before them at least three cases that gave them fair warning that their application of the MWBE programs … were unconstitutional: Croson, Adarand and [Engineering Contractors Association]." Id. at 1137. The court found that the Commissioners voted to apply the contract measures after the Supreme Court decided both Croson and Adarand. Id. Moreover, the Eleventh Circuit had already struck down the construction provisions of the same MWBE programs. Id. Thus, the case law was "clearly established" and gave the Commissioners fair warning that the MWBE programs were unconstitutional. Id.

The court also found the Commissioners had specific information from the County Manager and other internal studies indicating the problems with the MWBE programs and indicating that parity had been achieved. Id. at 1338. Additionally, the Commissioners did not conduct the annual studies mandated by the MBE/WBE ordinance itself. Id. For all the foregoing reasons, the court held the Commissioners were subject to individual liability for any compensatory and punitive damages.

The district court enjoined the County, the Commissioners, and the County Manager from using, or requiring the use of, gender, racial, or ethnic criteria in deciding (1) whether a response to an RFP submitted for A&E work is responsive, (2) whether such a response will be considered, and (3) whether a contract will be awarded to a consultant submitting such a response. The court awarded the plaintiffs $100 each in nominal damages and reasonable attorneys' fees and costs, for which it held the County and the Commissioners jointly and severally liable.

### 14. The Builders Ass'n of Greater Chicago v. The City of Chicago, 298 F. Supp. 2d 725 (N.D. Ill. 2003)

This case is instructive to the Consortium and the disparity study because of the court's focus and analysis on whether the City of Chicago's MBE/WBE program was narrowly tailored. The basis of the court's holding that the program was not narrowly tailored is instructive for any program considered by the Consortium because of the reasons provided as to why the program did not pass muster.

The plaintiff, the Builders Association of Greater Chicago, brought this suit challenging the constitutionality of the City of Chicago's construction Minority and Women Owned Business ("MWBE") Program. The court held that the City of Chicago's MWBE program was unconstitutional because it did not satisfy the requirement that it be narrowly tailored to achieve a compelling governmental interest. The court held that it was not narrowly tailored for several reasons, including because there was no "meaningful individualized review" of MBE/WBEs; it had no termination date nor did it have any means for determining a termination; the "graduation" revenue amount for firms to graduate out of the program was very high, $27,500,000 and in fact very few firms graduated; there was no net worth threshold; and, waivers were rarely or never granted on construction contracts. The court found that the City program was a "rigid numerical quota," a quota related not to the number of available, willing and able firms. Formulistic percentages, the court held, could not survive the strict scrutiny.

The court held that the goals plan did not address issues raised as to discrimination regarding market access and credit. The court found that a goals program does not directly impact prime contractor's selection of subcontractors on non-goals private projects. The court found that a set-aside or goals program does not directly impact difficulties in accessing credit, and does not address discriminatory loan denials or higher interest rates.

The court concluded that other race-neutral means were available to impact credit, high interest rates, and other potential marketplace discrimination. The court pointed to race-neutral means including linked deposits, with the City banking at institutions making loans to startup and smaller firms. Other race-neutral programs referenced included quick pay and contract downsizing; restricting self-performance by prime contractors; a direct loan program; waiver of bonds on contracts under $100,000; a bank participation loan program; a 2 percent local business preference; outreach programs and technical assistance and workshops; and seminars presented to new construction firms.

The court held that race and ethnicity do matter, but that racial and ethnical classifications are highly suspect, can be used only as a last resort, and cannot be made by some mechanical formulation. Therefore, the court concluded the City's MWBE Program could not stand in its present guise. The court held that the present program was not narrowly tailored to remedy past discrimination and the discrimination demonstrated to now exist.

The court entered an injunction, but delayed the effective date for six months from the date of its order, December 29, 2003. The court held that the City had a "compelling interest in not having its construction projects slip back to near monopoly domination by white male firms." The court ruled a brief continuation of the program for six months was appropriate "as the City rethinks the many tools of redress it has available."

### 15. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 218 F. Supp. 2d 749 (D. Md. 2002)

This case is instructive to the Consortium and the disparity study because the court found the Executive Order of the Mayor of the City of Baltimore was precatory in nature (creating no legal obligation or duty) and contained no enforcement mechanism or penalties for noncompliance and imposed no substantial restrictions; the Executive Order announced goals that were found to be aspirational only.

The Associated Utility Contractors of Maryland, Inc. ("AUC") sued the City of Baltimore challenging its ordinance providing for minority and women owned business enterprise participation in city contracts. Previously, an earlier City of Baltimore MBE/WBE program was declared unconstitutional. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000). The City adopted a new ordinance that provided for the establishment of MBE/WBE participation goals on a contract-by-contract basis, and made several other changes from the previous MBE/WBE program declared unconstitutional in the earlier case.

In addition, the Mayor of the City of Baltimore issued an Executive Order that announced a goal of awarding 35 percent of all City contracting dollars to MBE/WBEs. The court found this goal of 35 percent participation was aspirational only and the Executive Order contained no enforcement mechanism or penalties for noncompliance. The Executive Order also specified many "noncoercive" outreach measures to be taken by the City agencies relating to increasing participation of MBE/WBEs. These measures were found to be merely aspirational and no enforcement mechanism was provided.

The court addressed in this case only a motion to dismiss filed by the City of Baltimore arguing that the Associated Utility Contractors had no standing. The court denied the motion to dismiss holding that the association had standing to challenge the new MBE/WBE ordinance, although the court noted that it had significant issues with the AUC having representational standing because of the nature of the MBE/WBE plan and the fact the AUC did not have any of its individual members named in the suit. The court also held that the AUC was entitled to bring an as applied challenge to the Executive Order of the Mayor, but rejected it having standing to bring a facial challenge based on a finding that it imposes no requirement, creates no sanctions, and does not inflict an injury upon any member of the AUC in any concrete way. Therefore, the Executive Order did not create a "case or controversy" in connection with a facial attack. The court found the wording of the Executive Order to be precatory and imposing no substantive restrictions.

After this decision the City of Baltimore and the AUC entered into a settlement agreement and a dismissal with prejudice of the case. An order was issued by the court on October 22, 2003 dismissing the case with prejudice.

### 16. Associated Utility Contractors of Maryland, Inc. v. The Mayor and City Council of Baltimore, 83 F. Supp. 2d 613 (D. Md. 2000)

The court held unconstitutional the City of Baltimore's "affirmative action" program, which had construction subcontracting "set-aside" goals of 20 percent for MBEs and 3 percent for WBEs. The court held there was no data or statistical evidence submitted by the City prior to enactment of the Ordinance. There was no evidence showing a disparity between MBE/WBE availability and

utilization in the subcontracting construction market in Baltimore. The court enjoined the City Ordinance.

### 17. Associated Gen. Contractors v. Drabik, 50 F. Supp. 2d 741 (S.D. Ohio 1999)

In this decision, the district court reaffirmed its earlier holding that the State of Ohio's MBE program of construction contract awards is unconstitutional. The court cited to F. Buddie Contracting v. Cuyahoga Community College, 31 F. Supp. 2d 571 (N.D. Ohio 1998), holding a similar local Ohio program unconstitutional. The court repudiated the Ohio Supreme Court's holding in Ritchey Produce, 707 N.E. 2d 871 (Ohio 1999), which held that the State's MBE program as applied to the state's purchase of non-construction-related goods and services was constitutional. The court found the evidence to be insufficient to justify the MBE program. The court held that the program was not narrowly tailored because there was no evidence that the State had considered a race-neutral alternative.

This opinion underscored that governments must show four factors to demonstrate narrow tailoring: (1) the necessity for the relief and the efficacy of alternative remedies, (2) flexibility and duration of the relief, (3) relationship of numerical goals to the relevant labor market, and (4) impact of the relief on the rights of third parties. The court held the Ohio MBE program failed to satisfy this test.

### 18. Phillips & Jordan, Inc. v. Watts, 13 F. Supp. 2d 1308 (N.D. Fla. 1998)

This case is instructive to the Consortium and the disparity study because it addressed a challenge to a state and local government MBE/WBE-type program and considered the requisite evidentiary basis necessary to support the program. In Phillips & Jordan, the District Court for the Northern District of Florida held that the Florida Department of Transportation's ("FDOT") program of "setting aside" certain highway maintenance contracts for African American- and Hispanic-owned businesses violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The parties stipulated that the plaintiff, a non-minority business, had been excluded in the past and may be excluded in the future from competing for certain highway maintenance contracts "set aside" for business enterprises owned by Hispanic and African American individuals. The court held that the evidence of statistical disparities was insufficient to support the Florida DOT program.

The district court pointed out that Florida DOT did not claim that it had evidence of intentional discrimination in the award of its contracts. The court stated that the essence of FDOT's claim was that the two year disparity study provided evidence of a disparity between the proportion of minorities awarded FDOT road maintenance contracts and a portion of the minorities "supposedly willing and able to do road maintenance work;" that FDOT did not itself engage in any racial or ethnic discrimination; so FDOT must have been a passive participant in "somebody's" discriminatory practices.

Since it was agreed in the case that FDOT did not discriminate against minority contractors bidding on road maintenance contracts, the court found that the record contained insufficient proof of discrimination. The court found the evidence insufficient to establish acts of discrimination against African American- and Hispanic-owned businesses.

The court raised questions concerning the choice and use of the statistical pool of available firms relied upon by the disparity study. The court expressed concern about whether it was appropriate to use census data to analyze and determine which firms were available (qualified and/or willing and able) to bid on FDOT road maintenance contracts.

### 19. H.B. Rowe Corp., Inc. v. W. Lyndo Tippett, North Carolina DOT, et al; 589 F. Supp. 2d 587 (E.D.N.C. 2008)

In H.B. Rowe Company v. Tippett, North Carolina Department of Transportation, et al. ("Rowe"), the United States District Court for the Eastern District of North Carolina, Western Division, heard a challenge to the State of North Carolina Minority Business Enterprise and Woman Business Enterprise Program ("MBE Program" or "WBE Program"), which is a State of North Carolina "affirmative action" program administered by the North Carolina DOT ("NCDOT"). The NCDOT MWBE Program challenged in Rowe involves projects funded solely by the State of North Carolina and not funded by the Federal Department of Transportation. 589 F.Supp. 2d 587.

**Background.** In this case Plaintiff, a family-owned road construction business, bid on a NCDOT initiated state-funded project. The NCDOT rejected Plaintiff's bid in favor of the next low bid that had proposed higher minority participation on the project as part of its bid. According to NCDOT, Plaintiff's bid was rejected because of Plaintiff's failure to demonstrate "good faith efforts" to obtain pre-designated levels of minority participation on the project.

As a prime contractor, Plaintiff Rowe was obligated under the MWBE Program to either obtain participation of specified levels of minority business enterprise and women business enterprise participation as subcontractors, or to demonstrate good faith efforts to do so. For this particular project, NCDOT had set MBE and WBE subcontractor participation goals of 10 percent and 5 percent, respectively. Plaintiff's bid included 6.6 percent WBE participation, but no MBE participation. The bid was rejected after a review of Plaintiff's good faith efforts to obtain MBE participation. The next lowest bidder submitted a bid including 3.3 percent MBE participation and 9.3 percent WBE participation, and although not obtaining a specified level of MBE participation, it was determined to have made good faith efforts to do so. (Order of the District Court, dated March 29, 2007).

North Carolina's MWBE Program "largely mirrors" the Federal Disadvantage Business Enterprise ("DBE") Program, which NCDOT is required to comply with in awarding construction contracts that utilize Federal funds. (589 F.Supp. 2d 587; Order of the District Court, dated September 28, 2007). Like the Federal DBE Program, under North Carolina's MWBE Program, the goals for minority and female participation are aspirational rather than mandatory. Id. An individual target for MBE participation was set for each project. Id.

Historically, the NCDOT had engaged in several disparity studies. The most recent study was done in 2004. Id. The 2004 study, which followed the study in 1998, concluded that disparities in utilization of MBE's persist and that a basis remains for continuation of the MWBE Program. The new MWBE statute as revised was approved in 2006, which modified the previous MBE statute by eliminating the 10 percent and 5 percent goals and establishing a fixed expiration date of 2009.

Plaintiff filed its complaint in this case in 2003 against the NCDOT and individuals associated with the NCDOT, including the Secretary of the NCDOT, W. Lyndo Tippett. In its complaint, Plaintiff alleged that the MWBE statute for NCDOT was unconstitutional on its face and as applied. 589 F.Supp. 2d 587.

**March 29, 2007 Order of the District Court.** The matter came before the District Court initially on several motions, including the Defendants' Motion to Dismiss or for Partial Summary Judgment, Defendants' Motion to Dismiss the Claim for Mootness and Plaintiff's Motion for Summary Judgment. The Court in its October 2007 Order granted in part and denied in part Defendants' Motion to Dismiss or for partial summary judgment; denied Defendants' Motion to Dismiss the Claim for Mootness; and dismissed without prejudice Plaintiff's Motion for Summary Judgment.

The Court held the Eleventh Amendment to the United States Constitution bars Plaintiff from obtaining any relief against Defendant NCDOT, and from obtaining a retrospective damages award against any of the individual defendants in their official capacities. The Court ruled that Plaintiff's claims for relief against the NCDOT were barred by the Eleventh Amendment, and the NCDOT was dismissed from the case as a Defendant. Plaintiff's claims for interest, actual damages, compensatory damages and punitive damages against the individual defendants sued in their official capacities also was held barred by the Eleventh Amendment and were dismissed. But, the Court held that Plaintiff was entitled to sue for an injunction to prevent state officers from violating a federal law, and under the *Ex Parte Young* exception, Plaintiff's claim for declaratory and injunctive relief was permitted to go forward as against the individual defendants who were acting in an official capacity with the NCDOT. The Court also held that the individual defendants were entitled to qualified immunity, and therefore dismissed plaintiff's claim for money damages against the individual defendants in their individual capacities. Order of the District Court, dated March 29, 2007.

Defendants argued that the recent amendment to the MWBE statute rendered Plaintiff's claim for declaratory injunctive relief moot. The new MWBE statute adopted in 2006, according to the Court, does away with many of the alleged shortcomings argued by the Plaintiff in this lawsuit. The Court found the amended statute has a sunset date in 2009; specific aspirational participation goals by women and minorities are eliminated; defines "minority" as including only those racial groups which disparity studies identify as subject to underutilization in state road construction contracts; explicitly references the findings of the 2004 Disparity Study and requires similar studies to be conducted at least once every five years; and directs NCDOT to enact regulations targeting discrimination identified in the 2004 and future studies.

The Court held, however, that the 2004 Disparity Study and amended MWBE statute do not remedy the primary problem which the Plaintiff complained of: the use of remedial race- and gender-based preferences allegedly without valid evidence of past racial and gender discrimination. In that sense, the Court held the amended MWBE statute continued to present a live case or controversy, and accordingly denied the Defendants' Motion to Dismiss Claim for Mootness as to Plaintiff's suit for prospective injunctive relief. Order of the District Court, dated March 29, 2007.

The Court also held that since there had been no analysis of the MWBE statute apart from the briefs regarding mootness, Plaintiff's pending Motion for Summary Judgment was dismissed without prejudice. Order of the District Court, dated March 29, 2007.

**September 28, 2007 Order of the District Court.** On September 28, 2007, the District Court issued a new order in which it denied both the Plaintiff's and the Defendants' Motions for Summary Judgment. Plaintiff claimed that the 2004 Disparity Study is the sole basis of the MWBE statute, that the study is flawed, and therefore it does not satisfy the first prong of strict scrutiny review. Plaintiff also argued that the 2004 study tends to prove non-discrimination in the case of women; and finally the MWBE Program fails the second prong of strict scrutiny review in that it is not narrowly tailored.

The Court found summary judgment was inappropriate for either party and that there are genuine issues of material fact for trial. The first and foremost issue of material fact, according to the Court, was the adequacy of the 2004 Disparity Study as used to justify the MWBE Program. Therefore, because the Court found there was a genuine issue of material fact regarding the 2004 Study, summary judgment was denied on this issue.

The Court also held there was confusion as to the basis of the MWBE Program, and whether it was based solely on the 2004 Study or also on the 1993 and 1998 Disparity Studies. Therefore, the Court held a genuine issue of material fact existed on this issue and denied summary judgment. Order of the District Court, dated September 28, 2007.

**December 9, 2008 Order of the District Court (589 F.Supp. 2d 587).** The District Court on December 9, 2008, after a bench trial, issued an Order that found as a fact and concluded as a matter of law that Plaintiff failed to satisfy its burden of proof that the North Carolina Minority and Women's Business Enterprise program, enacted by the state legislature to affect the awarding of contracts and subcontracts in state highway construction, violated the United States Constitution.

Plaintiff, in its Complaint filed against the NCDOT alleged that N.C. Gen. St. § 136-28.4 is unconstitutional on its face and as applied, and that the NCDOT while administering the MWBE program violated Plaintiff's rights under the federal law and the United States Constitution. Plaintiff requested a declaratory judgment that the MWBE program is invalid and sought actual and punitive damages.

As a prime contractor, Plaintiff was obligated under the MWBE program to either obtain participation of specified levels of MBE and WBE subcontractors, or to demonstrate that good faith efforts were made to do so. Following a review of Plaintiff's good faith efforts to obtain minority participation on the particular contract that was the subject of Plaintiff's bid, the bid was rejected. Plaintiff's bid was rejected in favor of the next lowest bid, which had proposed higher minority participation on the project as part of its bid. According to NCDOT, Plaintiff's bid was rejected because of Plaintiff's failure to demonstrate good faith efforts to obtain pre-designated levels of minority participation on the project. 589 F.Supp. 2d 587.

**North Carolina's MWBE Program.** The MWBE program was implemented following amendments to N.C. Gen. Stat. §136-28.4. Pursuant to the directives of the statute, the NCDOT promulgated regulations governing administration of the MWBE program. See N.C. Admin. Code tit. 19A, § 2D.1101, et seq. The regulations had been amended several times and provide that NCDOT shall ensure that MBEs and WBEs have the maximum opportunity to participate in the performance of contracts financed with non-Federal funds. N.C. Admin. Code Tit. 19A § 2D.1101.

North Carolina's MWBE program, which affected only highway bids and contracts funded solely with state money, according to the District Court, largely mirrored the Federal DBE Program which NCDOT is required to comply with in awarding construction contracts that utilize federal funds. 589 F.Supp. 2d 587. Like the federal DBE program, under North Carolina's MWBE program, the targets for minority and female participation were aspirational rather than mandatory, and individual targets for disadvantaged business participation were set for each individual project. N.C. Admin. Code tit. 19A § 2D.1108. In determining what level of MBE and WBE participation was appropriate for each project, the NCDOT would take into account "the approximate dollar value of the contract, the geographical location of the proposed work, a number of the eligible funds in the geographical area, and the anticipated value of the items of work to be included in the contract." Id. The NCDOT would also consider "the annual goals mandated by Congress and the North Carolina General Assembly." Id.

A firm could be certified as a MBE or WBE by showing NCDOT that it is "owner controlled by one or more socially and economically disadvantaged individuals." NC Admin. Code tit. 1980, § 2D.1102.

The District Court stated the MWBE program did not directly discriminate in favor of minority and women contractors, but rather "encouraged prime contractors to favor MBEs and WBEs in subcontracting before submitting bids to NCDOT." 589 F.Supp. 2d 587. In determining whether the lowest bidder is "responsible," NCDOT would consider whether the bidder obtained the level of certified MBE and WBE participation previously specified in the NCDOT project proposal. If not, NCDOT would consider whether the bidder made good faith efforts to solicit MBE and WBE participation. N.C .Admin. Code tit. 19A§ 2D.1108.

There were multiple studies produced and presented to the North Carolina General Assembly in the years 1993, 1998 and 2004. The 1998 and 2004 studies concluded that disparities in the utilization of minority and women contractors persist, and that there remains a basis for continuation of the MWBE program. The MWBE program as amended after the 2004 study includes provisions that eliminated the 10 percent and 5 percent goals and instead replaced them with contract-specific participation goals created by the NCDOT; established a sunset provision that has the statute expiring on August 31, 2009; and provides reliance on a disparity study produced in 2004.

The MWBE program, as it stood at the time of this decision, provides that NCDOT "dictates to prime contractors the express goal of MBE and WBE subcontractors to be used on a given project. However, instead of the state hiring the MBE and WBE subcontractors itself, the NCDOT makes the prime contractor solely responsible for vetting and hiring these subcontractors. If a prime contractor fails to hire the goal amount, it must submit efforts of 'good faith' attempts to do so." 589 F.Supp. 2d 587.

**Compelling interest.** The District Court held that the NCDOT established a compelling governmental interest to have the MWBE program. The Court noted that the United States Supreme Court in Croson, made clear that a State Legislature has a compelling interest in eradicating and remedying private discrimination in the private subcontracting inherent in the letting of road construction contracts. 589 F.Supp. 2d 587, citing Croson, 488 U.S. at 492. The District Court found that the North Carolina Legislature established it relied upon a strong basis of evidence in

concluding that prior race discrimination in North Carolina's road construction industry existed so as to require remedial action.

The Court held that the 2004 Disparity Study demonstrated the existence of previous discrimination in the specific industry and locality at issue. The Court stated that disparity ratios provided for in the 2004 Disparity Study highlighted the underutilization of MBEs by prime contractors bidding on state funded highway projects. In addition, the Court found that evidence relied upon by the legislature demonstrated a dramatic decline in the utilization of MBEs during the program's suspension in 1991. The Court also found that anecdotal support relied upon by the legislature confirmed and reinforced the general data demonstrating the underutilization of MBEs. The Court held that the NCDOT established that, "based upon a clear and strong inference raised by this Study, they concluded minority contractors suffer from the lingering effects of racial discrimination." 589 F.Supp. 2d 587.

With regard to WBEs, the Court applied a different standard of review. The Court held legislative scheme as it relates to MWBEs must serve an important governmental interest and must be substantially related to the achievement of those objectives. The Court found that the NCDOT established an important governmental interest. The 2004 Disparity Study provided that the average contracts awarded WBEs are significantly smaller than those awarded non-WBEs. The Court held that NCDOT established based upon a clear and strong inference raised by the Study, women contractors suffer from past gender discrimination in the road construction industry.

**Narrowly tailored.** The District Court noted that the Fourth Circuit of Appeals lists a number of factors to consider in analyzing a statute for narrow tailoring: (1) the necessity of the policy and the efficacy of alternative race neutral policies; (2) the planned duration of the policy; (3) the relationship between the numerical goal and the percentage of minority group members in the relevant population; (4) the flexibility of the policy, including the provision of waivers if the goal cannot be met; and (5) the burden of the policy on innocent third parties. 589 F.Supp. 2d 587, quoting Belk v. Charlotte-Mecklenburg Board of Education, 269 F.3d 305, 344 (4th Cir. 2001).

The District Court held that the legislative scheme in N.C. Gen. Stat. § 136-28.4 is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts. The District Court's analysis focused on narrowly tailoring factors (2) and (4) above, namely the duration of the policy and the flexibility of the policy. With respect to the former, the Court held the legislative scheme provides the program be reviewed, at least every five years to revisit the issue of utilization of MWBEs in the road construction industry. N.C. Gen. Stat. §136-28.4(b). Further, the legislative scheme that the District Court found, provides a sunset provision so that the program will expire on August 31, 2009, unless renewed by an act of the legislature. Id. at § 136-28.4(e). The Court held these provisions ensured the legislative scheme last no longer than necessary.

The Court also found that the legislative scheme enacted by the North Carolina legislature provides flexibility insofar as the participation goals for a given contract are determined on a project by project basis. § 136-28.4(b)(1). Additionally, the court found the legislative scheme in question is not overbroad because the statute applies only to "those racial or ethnicity classifications identified by a study conducted in accordance with this section that had been subjected to discrimination in a relevant marketplace and that had been adversely affected in their ability to obtain contracts with the

Department." § 136-28.4(c)(2). The Court found that Plaintiff failed to provide any evidence that indicates minorities from non-relevant racial groups had been awarded contracts as a result of the statute.

The Court held that the legislative scheme is narrowly tailored to remedy private discrimination of minorities and women in the private subcontracting inherent in the letting of road construction contracts, and therefore found that § 136-28.4 is constitutional.

The decision of the District Court has been appealed to the United States Court of Appeals for the Fourth Circuit, which appeal is pending at this time.

# APPENDIX B.
# Summary of Anecdotal Interviews

# APPENDIX B.
# Summary of Anecdotal Interviews

Appendix B provides a summary of anecdotal interviews for the Consortium agency disparity studies. A separate table of contents for Appendix B is provided on the following pages.

# Table of Contents


Introduction and Background....8

Summary of Anecdotes....9

I. Certification....9

A. Consortium anecdotes regarding certification....9

The certification process....9

Perceived value of certification....14

Recommendations related to the certification process....18

B. SDCRAA anecdotes regarding certification....21

The certification process....21

Perceived value to certification....22

C. Caltrans anecdotes regarding certification....24

The certification process....24

Perceived value of certification....27

Recommendations related to the certification process....29

II. Public and Private Sector Work....30

A. Consortium anecdotes regarding public and private sector work....30

Private sector work experience....30

Public sector non-Consortium work experience....35

Work experience with the Consortium....40

Differences between private sector and public sector work experience....45

Anecdotes regarding businesses acting as prime contractors and subcontractors....48

B. SDCRAA anecdotes regarding public and private sector work....56

Private sector work experience....56

Public sector work experience....58

DBEs as prime contractors....62

C. Caltrans anecdotes regarding public and private sector work....63

DBEs as prime contractors....63

Anecdotes of DBEs regarding private sector work opportunities....66

Anecdotes of DBEs regarding public sector work opportunities.....67

D. Telephone interview anecdotes regarding public and private sector work....68

III. DBE Utilization ..... 68

A. Consortium anecdotes regarding DBE utilization ..... 68

Reported utilization of DBEs by prime contractors in the public and private sectors ..... 68

Minority and female-owned business perceptions of being utilized by prime contractors in the public and private sectors ..... 78

B. SDCRAA anecdotes regarding DBE utilization ..... 88

Successful MBE/WBE firms ..... 88

Reported utilization of DBEs by prime contractors in the public and private sectors ..... 89

Minority and female-owned business perceptions of being utilized by prime contractors in the public and private sectors ..... 92

DBE utilization following Proposition 209 ..... 92

C. Caltrans anecdotes regarding DBE utilization ..... 93

Experience with DBEs in the public and private sector ..... 93

Experiences regarding DBE utilization after May 2006 ..... 106

IV. Consortium Bidding Process ..... 109

A. Consortium anecdotes regarding the bidding process ..... 109

Experiences with the Consortium bidding process ..... 109

Notification of opportunities to bid ..... 115

Knowledge of prime contractors' interest to bid ..... 120

Denials of bid or price quote submission opportunities ..... 125

Recommendations related to bidding ..... 126

B. Telephone interview anecdotes regarding public and private sector work ..... 130

V. Partnerships ..... 131

A. Consortium anecdotes regarding partnerships ..... 131

Joint ventures ..... 131

Mentor-protégé ..... 134

B. SDCRAA anecdotes regarding partnerships ..... 137

Joint ventures ..... 137

Mentor-protégé ..... 138

C. Caltrans anecdotes regarding partnerships ..... 141

Joint ventures ..... 141

Mentor-protégé ..... 142

Recommendations related to partnerships ..... 142

VI. Prequalification ..... 143

A. Consortium anecdotes regarding prequalification ..... 143

Recommendations related to prequalification ..... 147

B. Telephone interview anecdotes regarding prequalification ..... 148

VII. Licensing ..... 148

A. Consortium anecdotes regarding licensing ..... 148

VIII. Experiences with Payment ..... 150

A. Consortium anecdotes regarding experiences with payment ..... 150

Recommendations related to payment ..... 164

B. SDCRAA anecdotes regarding experiences with payment ..... 165

Payment by prime contractors, public agencies, or private sector clients ..... 165

Denial of payment based on race, ethnicity, or gender ..... 169

Payment recommendations ..... 169

C. Caltrans anecdotes regarding experiences with payment ..... 170

Payment by prime contractors ..... 170

Denial of payment based upon race ..... 172

Reccomendations related to payment ..... 172

D. Telephone interview anecdotes regarding payment ..... 172

IX. Experiences with Financing and Bonding ..... 173

A. Consortium anecdotes regarding experiences with financing, bonding, and insurance ..... 173

Recommendations related to bonding and financing ..... 179

B. SDCRAA anecdotes regarding experiences with financing, bonding, and insurance ..... 179

Recommendations related to bonding and financing ..... 184

C. Caltrans anecdotes regarding experiences with financing, bonding and insurance ..... 184

Recommendations related to bonding and financing ..... 189

X. The Effect of Race, Ethnicity, and Gender Upon a Firm's Ability to Obtain or Engage in Business ..... 190

A. Consortium anecdotes regarding the effect of race, ethnicity, and gender, if any, upon a firm's ability to obtain or engage in business ..... 190

Work environment for minorities and women ..... 196

Stereotypical attitudes ..... 199

Offensive comments or behavior ..... 202

Discrimination ..... 204

Sexual harassment ..... 206

B. SDCRAA anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business ..... 207
Perceptions regarding race, ethnicity, or gender effects ..... 207
Work environment ..... 211
Stereotypical attitudes ..... 212
C. Caltrans anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business ..... 213
Perceptions regarding race, ethnicity, or gender effects ..... 213
Work environment ..... 216
XI. Percieved General Barriers to Participation in the Public and Private Sectors ..... 218
A. Consortium anecdotes regarding perceived general barriers to participation in the public and private sectors ..... 218
Barriers to pursuing work with the Consortium ..... 218
Barriers to pursuing work with other non-Consortium public sector agencies ..... 220
Barriers to pursuing work in the private sector ..... 221
Good ol' boy network ..... 225
Bid shopping ..... 233
Bid manipulation/different bid criteria ..... 236
DBE fronts ..... 238
False DBE reporting ..... 240
Good faith efforts ..... 242
Recommendations related to good faith efforts ..... 245
B. SDCRAA anecdotes regarding perceived general barriers to participation in the public and private sectors ..... 246
Good ol' boy network ..... 246
Bid shopping and manipulation ..... 250
Experience and expertise ..... 252
Personnel ..... 253
Learning about work ..... 255
DBE fronts ..... 255
False DBE reporting ..... 257
Price discrimination by suppliers ..... 258
Good faith efforts ..... 258
Double standards in performance ..... 263
Unfair contract denials ..... 264
Recommendations related to good faith efforts ..... 265

C. Caltrans anecdotes regarding perceived general barriers to participation in the public and private sectors ..... 265
Good ol' boy network ..... 265
Bid shopping ..... 269
Bid manipulation/different bid criteria ..... 270
DBE Fronts ..... 271
False DBE reporting ..... 272
Good faith efforts ..... 272
Recommedations related to good faith efforts ..... 276
D. Telephone interview anecdotes regarding perceived general barriers to participation in the public and private sectors ..... 277

XII. Experiences Working with the Consortium ..... 278

A. Consortium anecdotes regarding experience working with the Consortium ..... 278
Consortium officials and staff ..... 278
Consortium online websites ..... 281
DBE directory ..... 284
B. Caltrans anecdotes regarding the DBE directory ..... 286
Experience with the DBE directory ..... 286
Recommendation regarding the DBE directory ..... 288

XIII. Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures ..... 288

A. Consortium anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures ..... 288
Outreach programs ..... 288
Simplification and streamlining of the bid process ..... 297
Segmenting larger contracts into smaller contracts ..... 299
Monitor DBE utilization ..... 302
Recommendations related to remedies ..... 304
Recommendations related to DBE programs ..... 309
B. SDCRAA anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures ..... 310
Outreach programs ..... 311
Educational, training, and technical skills programs ..... 313
Assistance with financing, bonding, and insurance ..... 315
Simplification and streamlining of the bid process ..... 317
Segmenting larger contracts into smaller contracts ..... 318
Price/Evaluation preferences ..... 320
Recommendations related to remedies ..... 321
Recommendations related to DBE programs ..... 322

C. Caltrans anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures ..... 325

Educational, training, technical skills ..... 325

Assistance with financing, bonding, and insurance ..... 326

Efforts to segment larger contracts into smaller contracts ..... 326

Recommendations related to remedies ..... 327

Recommendations related to DBE programs ..... 330

D. Telephone interview anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures ..... 333

# APPENDIX B.
# Summary of Anecdotal Interviews

## Introduction and Background

Appendix B summarizes perceptions and anecdotes from personal interviews that the study team conducted regarding the contracting and procurement procedures and the Disadvantaged Business Enterprise (DBE) Program that the Los Angeles County Metropolitan Transportation Authority, the Southern California Regional Rail Authority (Metrolink), the Orange County Transportation Authority (OCTA), the San Diego Association of Governments (SANDAG), and the San Diego Metropolitan Transit System (MTS) administer. The agencies are referred to collectively as "the Consortium" in the present report.

Attorneys with Holland & Knight LLP and individuals at John Harris & Associates conducted sixty interviews for the present report. Interviewees included prime contractors, subcontractors, professional service providers, and trade and professional organizations that have a membership base of numerous minority-, white woman-, and majority-owned firms (i.e., white male-owned firms).

To generate a list of potential interviewees, BBC randomly sampled the population of firms and organizations that work in Southern California. The study team stratified the sample based on firm type, location, and race/ethnicity/gender of ownership. The study team contacted each firm or organization in the resulting sample and subsequently interviewed all of the firms that agreed to participate. Most of the interviews were conducted with an officer from each firm or organization. The study team assigned each interviewee with an identification number. The interviewees are subsequently referenced and identified by that number.

The study team interviewed the following trade and professional organizations and included their anecdotes in the present report:

- Latino Business Owners of America (San Diego, CA).[1]
- Black Contractors Association (San Diego, CA).[2]

In addition, the present report also includes anecdotes from interviews conducted in connection with BBC Research & Consulting's 2007 California Department of Transportation (Caltrans) and 2009 San Diego Regional County Airport Authority (SDRCAA) studies. Those interviews will be

[1] The Latino Business Owners of America (TA #1) is a trade association comprised of Hispanic men and women. Members specialize in construction, consulting, technical, retail and international commerce and trade. Most members have been in business for 20 to 30 years and, on average, employ less than three full time employees.

[2] The Black Contractors Association (TA #2) is a trade association comprised of African American members in various specialty areas including architecture, engineerin, horizontal and vertical construction and trucking. Generally, members have been in business for approximately 5 to 10 years and employ an average of 5 to 12 full time employees.

referenced using a "CT" prefix before the interviewee number for Caltrans interviews and an "SD" prefix for SDRCAA interviews.[3]

The total number of interviews that the study team included from the various sources described above are as follows:

- 60 Consortium interviews;
- 53 SDRCAA interviews; and
- 48 Caltrans interviews.

Of the firms that the study team interviewed, some are exclusively or primarily a prime contractor, some are exclusively or primarily a subcontractor, and some are both a prime contractor and a subcontractor. Some of those firms are minority-owned, some are white woman-owned, and some are majority-owned. All of the firms were located in Southern California.

In addition to information from interviews and public hearing testimony, Appendix B also includes responses from telephone interviews that the study team conducted with Southern California firms. Those surveys were conducted as part of the availability analysis, and included an open-ended question that allowed respondents to offer general insights about working in their industries or working with public agencies. More than 40,000 firms were given the opportunity to complete the telephone survey for the study. Of those firms, 11,510 actually completed the survey and 404 provided a response to the open ended question.

## Summary of Anecdotes

### I. Certification

#### A. Consortium anecdotes regarding certification

**The certification process**

**Some interviewees reported a positive experience with the Consortium's certification process (Interviewees #: 9, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 28, 30, 35, 36, 38, 39, 43, 44, 46, 48, 52).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that although he has not had experience with the certification process since 1987, he believes that the process is getting "smoother and smoother."

Interviewee #10, a DBE-certified African American female-owned accounting firm, reported that the certification process involved a lot of paperwork and it was a long process; overall it was a positive experience. Interviewee #10 stated that it took them approximately eight hours to complete the paperwork.

[3] Trade association interviews included from the Caltrans study are referenced using the prefix CATA and trade association interviews included from the SDRCAA study are referenced using the prefix SDTA.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that the certification process was fairly easy and took her about 15 minutes to fill out the forms online. She stated the L.A. County MTA process was more involved including an interview; she stated that paperwork took "a couple of hours" to complete.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the Consortium certification process is "fine." He stated the Consortium does a pretty good job of site visits, surveys, and audits. He stated that there are forms to fill out and the certification process is in line with the certification process of other states.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that with respect to the Metrolink certification process, the forms are challenging but Metrolink has done a better job of streamlining the process.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated the certification process is not too cumbersome. The company is currently involved in the certification process with L.A. County MTA.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, felt her experience with the Consortium certification process was excellent.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that her experience with L.A. County Metro's certification process was easy.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had no problem with the Consortium's certification process.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that his experience with certification occurred a long time ago. He recalled that it required a lot of paperwork but overall there was no problem.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that her experience with certification was good in that it proceeded smoothly.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience with the Consortium's certification process. His administrative assistant stated that their contact at L.A. County MTA was very helpful and supportive.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he had a fairly good experience with the Consortium certification process.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that a large prime contractor assisted him with obtaining his certifications; they walked him through the process which made it easier for him to become certified.

Interviewee #35, an African American female-owned WBE/MBE-certified management consulting firm, stated that the Consortium's certification process was simple and easy.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that the certification process was smooth but involved a lot of paperwork.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he had a relatively good experience going through the certification process. He stated they performed a very diligent and thorough investigation. In his opinion it was a "meaningful operation" and he was very happy that they took the time to make sure that you qualify as a DBE when you apply for certification.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that the process was adequate and did not notice anything out of the ordinary.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that the Consortium certification process was smooth with no problems.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, described the certification process as fine and smooth.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that L.A. County MTA made the certification process easy.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that the certification process was quick and painless.

**Some interviewees reported challenges in connection with the Consortium's certification process (Interviewees #12, 16, 17, 18, 25, 26, 29, 32, 33, 34, 37, 40, 41, 42, 45, 47, 49, 50, 51, TA #2).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that his business was certified through the Consortium through OCTA. They had originally tried to get certified with the City of Los Angeles but they take "forever" and you can wait years before receiving your certification. He stated that the process with OCTA was "excellent" and they received their certification within three months, in part, because the effort was driven by a proposal.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, indicated that the certification process was somewhat cumbersome because of the amount of paperwork, specifically the volume of financial data required to be produced; as a smaller company, Interviewee #16 stated that it did not have ready access to all of the financial information requested during the certification process. According to Interviewee #16, there is always more paperwork, and it is very repetitive.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the certification process is cumbersome. Interviewee #17 stated that very early in the certification process, many, many years ago, the certifying agencies were suspicious about where certain monies came from during start up. The agencies were suspicious that Interviewee #17 was not actually running the business herself, but that it was a front.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, indicated that most recently, the certification process was easy, but that a couple years ago it was extremely arduous and it took her more than a year to get certified. She was surprised during the last renewal process when it only took about two weeks to receive the certification paperwork back after submission. Interviewee #18 noted that the certification process has greatly improved over a very long time frame. In the past, Interviewee #18 stated that she was often faced with many repetitive requests for information, and the time associated with certification was "unsettling."

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that the Consortium's certification process was tedious.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, found the Consortium certification process to be complicated and incredibly time-consuming. She also thought that it was invasive in terms of the financial information requested.

Interviewee #29, an African American male-owned electrical contractor, stated that he has attempted to get certified but he feels frustrated that after 21 years he has not been able to get certified. He stated that the certification process is difficult, tedious, and hard to understand.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that the certification process was not easy; they had to submit a lot of documents. He understood that was the process so he followed the rules with the hope that it would provide avenues to do business with the L.A. County MTA.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, felt that there was a value to certification. She did, however, state that Caltrans was two years behind on approving applications for certifications; the L.A. County MTA was very slow, and the state process is confusing. She also stated that some other agencies' certification process was not very good. In her experience, BART (Bay Area Rapid Transit) was the best. Her recommendation would be to have a "Unified Qualification Process," where one clearinghouse can review applications and issue certifications that will be accepted by all the agencies.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that the certification process was tedious. She stated that BART's (Bay Area Rapid Transit) system is better by comparison.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that the certification process involved a lot of unnecessary and intrusive paperwork.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the certification process was not completed in a timely manner.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, stated that the certification process was tedious and filled with a lot of paperwork.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, felt that there was a lot of paperwork involved in the certification process. She

stated that there was so much paperwork that she considered not renewing her certification. After some serious reconsideration, however, she decided to renew it.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated she feels that the process to renew certification is too extensive and extremely invasive. She stated that it was too time-consuming and all around "too much."

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that the certification process was lengthy. He stated also that the L.A. County MTA lost his application and he had to complete the process all over again.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the certification process and the information requested is not relevant to the actual job that they do.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that there was a lot of paperwork although he was used to that given the nature of his business. However, he stated that there were too many reasons to potentially exclude an applicant.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, felt as though the certification process was very cumbersome. He stated that it took too long to complete, there was too much paperwork, and "even the renewals take a lot of time."

TA #2, the President of the Black Contractor's Association, stated that his association's members find the certification process intrusive. Many members do not want to provide their tax information and are concerned about who will see the information.

**Some interviewees reported having either limited or no experience with the Consortium's certification process (Interviewees #1, 2, 3, 6, 7, 8, 27).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, does not have any experience with the Consortium certification process. He has applied for certification with other agencies but he does not believe that there has been any value to the certification; the amount of paperwork is "kind of ridiculous."

Interviewee #2, a DBE-certified African American male owner of a structural engineering firm in the San Diego area, had no experience regarding the Certification process. He stated that he has considered working with the Consortium but he is too busy to have time for the cumbersome certification process.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he has only remote knowledge about the Consortium's certification process. Between 1990-1995 one of the firms that he worked at (prior to starting his current business) mentored small firms so he was a little more involved as to the requirements of those businesses but does not currently have much knowledge about the process.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that their certification is through Caltrans so they had no experience with the Consortium's certification process.

**Perceived value of certification**

**Most interviewees perceived a value to certification (Interviewees #2, 3, 4, 5, 9, 10, 12, 13, 14, 15, 17, 19, 20, 22, 23, 24, 25, 26, 29, 30, 32, 33, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 51, 52, 55).** Interviewee #2, an African American male structural engineer in the San Diego area, is not certified but stated he thinks that there could be some value to the certification process because the Consortium agencies encourage minority hiring. It could open a door if the prime consultants are willing to work with DBEs.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he does think there is value to the certification process. However, there are problems with certain firms obtaining DBE certification inappropriately (i.e. DBE fronts). Interviewee #3 stated that the certification procedure used by the Consortium sometimes allows participation of firms that do not really qualify. He stated that these DBE fronts still exist today but could not identify any specific projects they worked on. However, he does not believe that the business owner's status as a minority or woman matters in the end. He stated, "If you do a good job you get work, if you do not you won't." Firms that continue to grow do so because they do the work properly.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that there is value to certification because once he made the decision to concentrate on public works projects, the certification helped. Without the certification, he believes that none of the prime contractors would have come to his company to request proposals. He stated the fact that his company is certified as a DBE definitely helps in terms of getting solicitations from the prime contractors. When the DBE Program was dropped by Caltrans he saw a decrease in requests for proposals. By that time, however, he had already established the company and had working relationships with the prime contractors so the prime contractors kept coming back.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, thinks that certification is valuable because many of the governmental entities have to have a certain amount of DBE contractors on their teams. The prime contractor has to look at what percentage of the RFP or proposal request is requesting DBEs and they have a list of certified entities that they pull from. Also, Interviewee #5 stated that electrical engineering is one of the areas in which the agencies want DBEs.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that there is a value to certification and that is "what started the company and what grew the company" (his company graduated from the DBE Program in 2004).

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that there is a value to certification and they would not be in business without it.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that "unfortunately" there is a value to certification. He stated that in many cases when they team up as a prime contractor they solicit or team up with larger firms because they are a DBE; this selection is based on qualifications. In contrast, however, when their firm is selected, he said it is based on their DBE status instead of on their qualifications.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that certification is valuable to a company that is just starting out and it has helped him sustain his business. He also said that the contracts received due to his certification have been helpful.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that there is a value to certification.

Interviewee #15, a Hispanic American male owner of an MBE-certified engineering and construction company, feels that there is value to certification, but that it is more "obvious" with Caltrans than with the Consortium entities.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that certification is a priority and that it is very important to her company. To Interviewee #17, having her certification is like doing her homework and being ready for opportunity to come.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that certification could be valuable if he could get more work.

Interviewee #29, an African American male-owned electrical contractor, stated that even though he is not certified he feels that there is a value to certification. He stated that he believes with certification his business would flourish and he would not be in the situation he is in now where he has to travel down to the valley and to San Diego to wherever the work is.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there is a value to becoming certified. He stated that it helps small firms open relations with large firms and builds relationships that can be longstanding and profitable for both parties involved.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, perceived a value to certification — that is why they went through the process.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that there is a value to certification but she did not know to what extent. She is not able to determine the effect of certification on her business' ability to obtain work.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated there was "absolutely" a value to certification; he stated that getting certified sends the message that small businesses are really in business to do business and are serious about being competitive.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that there is definitely a value to certification; this is the only thing that makes going through the certification process worthwhile.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, attributed 30 percent of his business to his DBE certification, but did not know whether there was a value to certification.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that there is definitely a value to certification when bidding because it provides necessary government documentation.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that there is a value to certification on federal projects, but not at the local level. He stated that ever since Proposition 209 passed, there are no more goals on projects. He stated that the City of Los Angeles has a policy known as "best efforts" which he does not believe is effective. He stated that the City of Los Angeles should have goals so that the DBEs can get work.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that there is absolutely a value to certification.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that there is a value to certification although sometimes it is a double-edged sword and does not do a whole lot. Nonetheless, he felt as though certification is good to have and the good outweighs the bad.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported that there is a value to certification because now government jobs would be awarded to his firm.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that there is a value to a business having certification depending on state law.

**Other interviewees perceived limited or no value to certification (Interviewees #6, 11, 18, 21, 27, 28, 31, 34, 35, 37, 47, 49, 50, TA #1, 2).** Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she has not seen any monetary benefit to having certification. Interviewee #11 did not have any recommendations for improving certification; she stated that certification is not the issue that impedes her ability to do work with the Consortium.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, does not believe that there is a value to certification, but she does not think that it hurts to be certified. Interviewee #18 is not sure whether or not she has won or lost a job as a result of having any certification. She is not sure how it hurts, but how much it helps is difficult to quantify. Interviewee #18 stated that in the past, the certification process used to have more value because it got you onto bid lists. Now she is not sure how that happens.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, felt there was absolutely no value to certification. She believes that the City of L.A., in general, is unfriendly to small businesses. She feels that it should follow the federal small business guidelines like the U.S. Department of Housing.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that there used to be a value to certification, but now, he stated, it is kind of useless; he stated that his company receives very little business as a result of certification.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he did not see any value to the certification process.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, feels that he has received almost no business due to his multiple certifications. In the years he has been in the business, he feels that the work he has received has been because of his proven record as opposed to any of the certifications; he is starting to question the value of certification. He has done one job for a contractor in Long Beach and they did ask about his SBE HUD Section 3 certification. He stated that maybe there is some value to being certified because of the advertisement in the Blue Book, and it does result in inquiries in to his business and their services and can lead to work.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, does not feel that there is a value to certification. She believes that there is a negative connotation associated with being a certified DBE/MBE/WBE when seeking potential work.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that certification helps with relationship building, but it does not give you an edge or help economically.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, did not feel as though there was a value to certification and stated that he has not received a single contract as a result of his certification.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the certification does not carry the same weight or value as it did in years past.

TA #1, the President of the Latino Business Owners of America, stated that most of his members feel that the certification programs are "a joke." He stated that many of his members do not renew their certifications because unless they are versed with the process, certification does not accomplish much for his members. His members become discouraged when they do not receive contracts and then often do not renew their certification. His members cannot afford to divert their attention for a couple of weeks to a RFP when they are not sure that their efforts will be fruitful; they need to keep cash flowing. When a small business ties up its assets on a public project, they cannot operate effectively in other areas and many of his members are not willing to do it. He provided one example of a trucker, for instance, who lost everything because he was unable to grow his business.

TA #2, the President of the Black Contractor's Association, stated that members sometimes feel there is value to the certification and other times not any value to the certification. He stated that certification encourages prime contractors to use DBEs, however, the prime contractors only use those DBEs when they are required to do so and do not use them when not required to do so. He also stated that the value of certification diminished after Proposition 209 was passed. He stated that Proposition 209 did away with race-conscious programs, and this has had an impact in terms of the availability of public work. He stated that some contractors do not call DBE subcontractors at all anymore.

**Recommendations related to the certification process**

**Several interviewees recommended streamlining the certification process such that certification applies from agency to agency (Interviewees #1, 13, 16, 30, 33, 34, TA #1).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, recommended making the certification process easier and involving less paperwork. He stated that it would be helpful to have a single entity responsible for maintaining certification and then allow other agencies to cross-reference the information. He stated that the certification process has deterred him from bidding on a number of projects because of the time and resources involved.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, recommended more reciprocity between agencies and from state to state with respect to certification. He stated that the certification process requires a lot of paperwork and red tape, but he understands the need for it and thinks that the process is reasonable.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that one problem with the certification process is that the various certifying entities do not recognize each other's certifications – each year there is a requirement that "change affidavits" be submitted, in addition to more documents and financial paperwork. But Interviewee #16 noted that he understands the reasoning for the extensive paperwork, acknowledging that one of the goals is likely to eliminate non-DBE/minority "figureheads" who are not actually running businesses. Interviewee #16 suggested that the certification process be simplified such that each of the certifying entities recognizes other certifications for the full length of the certification period.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended that the certification process be nationalized so that there will be a national database that can be accessed by agencies and other entities seeking such information. This would eliminate the need to be certified with multiple agencies that have diverse and tedious processes in place.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, recommended implementing a "Unified Qualification Process," where one clearinghouse can review applications and issue certifications that will be accepted by all the agencies.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended a nationalized certification program whereby certification would be accepted in all jurisdictions.

TA #1, the President of the Latino Business Owners of America, stated that one way of improving the certification process is to streamline the process. He suggested eliminating the need to certify for each agency and have one certification apply for each agency. He also stated that the program needs to encourage businesses to participate. He stated that although the agencies or prime contractors say there is no availability of DBEs for particular projects, if the Consortium created more opportunities, the these businesses would develop. He also suggested better outreach efforts. He stated that the Consortium should try to better dispense revenues evenly among larger and smaller businesses. He also suggests that the Consortium stop requiring certain specializations for projects if the contractor has some general area of knowledge that could apply to projects. He also suggests that the Consortium stop requiring particular products that prime contractors have an exclusive on and state in the specifications that a comparable or equal product may be used.

**Other interviewees recommended simplifying the application process (Interviewees #4, 14, 20, 25, 26, 27, 29, 30, 39, 41, 42, 50, 51).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, recommended making a change to shorten the time it takes for certification and making the process easier. He noted that the time investment is difficult for a small business.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that it is hard enough for a small business to get started without the added attention required to complete the certification process. He stated that the certification process requires the attention of the president of the company, an additional person, and a lot of resources.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the "system" can be confusing and the Consortium could do a better job of explaining how to get through the evaluations. She stated that site visits are an imposition for small businesses. She stated a classic example was that her business lost its certification in San Francisco because of three random site visits while her staff was out in the field; she was very frustrated and there was nothing that she could do about it.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that it took six months for his certification to be approved after he submitted his application. He was told the delay was due to a backlog of applications. He recommended streamlining the application process so that it does not take so long.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, recommended that the Consortium adjust the amount of required paperwork according to the size of the firm; she stated that many of the questions did not apply.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that since most businesses applying for certification are small, it would be preferable to reduce the amount of paperwork involved.

Interviewee #29, an African American male-owned electrical contractor, stated that the application process should be easier to understand and accessible to everyone interested in the certification process. He stated "make the knowledge available."

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there should be a shorter turnover period for processing and review of applications. He stated that the timing is inconvenient and it takes too long to receive certification. He does not understand why it would take over 30 days.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, recommended that paperwork be streamlined. He stated that the certification application requires a tremendous amount of hours to complete.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, recommended making the required application forms available online.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, recommended streamlining the application process; they stated that it took a long time to prepare which took away from their other business.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that the paperwork should be streamlined and less intrusive.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported that the certification process was "intrusive" and had a number of requirements that were "invasive;" he did not understand the need for some of the requirements.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, recommended streamlining the certification process and noted that it would speed up if the agencies were not short-staffed. He stated that the L.A. County MTA needs more staff in order to handle the certification applications.

**A few interviewees recommended changes to the certification process or to the qualifications (Interviewee #6, 26, TA #2).** Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, could not make many recommendations for changes or improvements to the certification process because he was not that familiar with the process, but did suggest that the threshold amount be raised to include companies with volume under $2 million so that more businesses can qualify for the program. Interviewee #6 also stated that government should support small businesses by not placing so many financial restraints on the business (such as permitting restraints).

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the Consortium should modify the qualifications to accommodate small businesses and make the request for financial information less intrusive.

TA #2, the President of the Black Contractor's Association, recommended the following changes or improvements for the certification process: the process should be streamlined; applicants should not be required to provide tax records, and a sworn affidavit regarding the applicant's financial status should be sufficient. In general he suggested less bureaucracy.

**Two interviewees noted that the process has changed and the Consortium should reevaluate the certification process. (Interviewee #24, 39).** Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that L.A. County MTA has "changed the ball game" and the process should be evaluated.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, suggested that the Consortium revisit the application process. She feels that some of the questions are ridiculous such as the size of her firm as it relates to her ability to perform on large projects. She does feel, however, that as far as some of the DBEs are concerned, if they cannot complete the forms then they do not need to be certified. She stated that in her opinion some of the questions help with the vetting process assisting in sorting out companies that cannot handle the work. This saves her firm and many other firms from wasting a lot of time using companies just because they are DBEs and not based off of their qualifications.

**Some interviewees wanted to see a more immediate benefit to certification. (Interviewees #5, 28, 32, 36, 37, 47).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, recommended that the Consortium allow companies like his that are minority run to qualify as a DBE even if the owner is a non-minority.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, recommended that the Consortium increase vendor participation.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, wanted to see a more immediate benefit to certification.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she became certified to obtain new business, but she has not in fact obtained any new business. She stated that there needs to be a system whereby DBEs are monitored, and thus leveling the playing field and making it fair for all contractors, large and small. She stated there has to be some way to make sure that everyone gets a piece of the pie.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that the Consortium needs to provide a significant amount of contracts on a rotating basis to allow businesses who have not yet developed beneficial connections to be involved in projects.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that it seems as though all of the large firms receive the contracts over and over again. He stated that he wants a contract with the Consortium and is frustrated that he has not received one.

### B. SDCRAA anecdotes regarding certification

The following anecdotes regarding certification were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

**The certification process**

**Some interviewees described the certification process as being long and time consuming or as otherwise cumbersome.** Interviewee #SD4, representing a Caucasian male-owned firm, stated that the certification process is "slow." He described an African American male-owned firm with whom he has worked in the past that has never been formally certified because of how much time the process takes.

SDTA #6, representing an Asian American trade organization, said that the certification process can be "extremely onerous" and that many of the organization's members do not have the expertise to fill out all of the forms.

Interviewee #SD19, representing a Caucasian male-owned firm, indicated that it is difficult for firms to get certified, particularly those with multiple owners: "At one point our company was owned by one woman partner —51 percent — but because of our structure we couldn't certify. It is tough to get that certification. Certification is more for those companies that are sole proprietors." She went on to note that "the perception of being MBE or WBE doesn't benefit anyone. You need the certification."

Interviewee #SD17, representing a Caucasian female-owned firm that is in the process of becoming certified, indicated that the certification process is difficult and requires a great deal of work: "I'm doing the paperwork to become a certified WBE with Caltrans; it is a lot of work."

Interviewee #SD18, representing a Caucasian female-owned firm that is not certified, said that the firm's reasons for not becoming certified primarily have to do with their reluctance to publicize personal assets and finances: "If we publicized our personal assets and financials, the unions would have a field day." Interviewee #SD18 went on to say that if the firm did not have to report their assets in a line item fashion, then they would be "more than willing" to go through with the certification process.

Interviewee #SD43, representing a Hispanic male-owned firm, reported that her firm is not yet MBE certified, because the process is so cumbersome and time-consuming: "It's a difficult process … It's just very time consuming."

**Some interviewees described the certification process as simple and straightforward.** Interviewee #SD14, representing a Hispanic American male-owned firm, remarked that the certification process is relatively easy and "didn't cost anything but time." Interviewee #SD20, representing an Asian American male-owned firm, characterized the process as "easy."

**Perceived value to certification**

**Many DBE certified firms recognized the benefits of certification.** Interviewee #SD20, representing an Asian American male-owned firm, attributed the growth of his business in part to his firm's DBE certification: "[DBE certification] really helped to grow the company and open doors. However, he pointed out that his firm's DBE certification only plays a role on federally funded projects.

Interviewee #SD10, representing an African American male-owned firm, reported that his firm's DBE certification has certainly been beneficial: "I am a certified firm — that is a benefit to me and to the prime contractor using my services … I would say that 99 percent of the agencies or private companies using us are using us to meet their [DBE] goal." However, he cautioned that being DBE certified does not solely determine success: "If you go into a business thinking that MBE, WBE certification [alone] is going to make you successful, it's not the case."

Interviewee #SD2, representing a Caucasian female-owned firm, reported that her firm's WBE certification has led to more relationships with prime contractors as well as to more work. However, she also noted that she has "won over" other local firms and agencies because of the quality of her work.

Interviewee #SD28, representing a Caucasian female-owned firm, indicated that the primary advantage of being DBE certified and of good faith efforts is that it forces prime contractors to at least consider her firm for subcontracting opportunities: "The contractors have to look at us a little closer … before [good faith efforts] they might not have even looked at us or even given us a shot." She continued, "In our business, if we can get our foot in the door, usually we can get the door open and get in. [The certification] helps quite a bit." Interviewee #SD28 made clear her belief that firms should not be given contracts just because they are DBE firms, but that they should be given the opportunity to demonstrate that they can do the work: "I'm not saying you should be given the job

just because you're a DBE … give the company a chance to do that work and prove that they are equal [to majority-owned firms]."

Similarly, Interviewee #SD30, representing an African American male-owned firm, indicated that DBE certification gives small firms a chance to break into the industry: "Being certified … gives the small [firms] a foot in the door to play with the big boys a little bit."

Interviewee #SD36, representing an African American male-owned firm that is in the process of becoming certified indicated that the certification will help his firm get business: "Certification could help us get more business. [Certified firms] get the first choice to get the contract. Typically, the minority contractor does not get the big contract … The DBE certification system makes [public agencies] do what they don't typically want to do [and award contracts to minority-owned firms] … With certification, they put companies like me at the front. That is how I see it benefiting me."

Interviewee #SD47, representing an African American female-owned firm, reported that nearly all of her business comes as a result of her DBE certification. She said that she spent several years building a reputation for her firm before becoming DBE certified and marketing her firm as such.

**Some firms that are not DBE certified recognized the benefits of certification.** Interviewee #SD18, representing a Caucasian female-owned firm that is not certified, said that her firm misses out on certain contracts because they are unable to "mark the WBE box."

Similarly, Interviewee #SD19, representing a Caucasian male-owned firm, said, "We probably miss out on a lot of jobs because we aren't certified." She went on to report that her firm has been denied subcontractor opportunities, because they are not DBE certified: "We have been passed over at least three or four times before, because we don't [help the prime contractor] meet the DBE or WBE certification goals…."

Interviewee #SD31, representing a Caucasian male-owned firm that is DVBE certified, indicated that he definitely sees advantages to DVBE and MBE/WBE certification: "[The certification] gets people's attention. It says, 'We should at least look at this company,' where as before … we would just be part of the herd." However, Interviewee #SD31 also pointed out that a potential disadvantage of certification is the stigma with which it might come: "Most people assume that … certification does not equal competency.… So the question is, are you really a competent firm, or are you just trying to ride your certification?"

**Several firms argued that there is no advantage associated with certification.** Interviewee #SD14, representing a Hispanic American male-owned firm, stated that there are no benefits associated with being certified: "There is no advantage anymore of being a DBE … I don't get any of my work from DBE [goals]." He went on to say, "DBE goals are out.… There are no benefits at all [to being DBE-certified]."

Interviewee #SD5, representing an African American male-owned firm, said: "There are some serious low baller bids that knock other bids out. The low bid gets the contract." Similarly, Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that, like other contractors, he does not consider minority or gender status when selecting subcontractors — he simply selects the subcontractor that submitted the lowest bid.

SDTA #7, representing a construction trade organization, said that the primary consideration that prime contractors make in selecting subcontractors is low bid status (i.e., prime contractors select the lowest bidder). Regarding that selection process, SDRTA #7 said, "The minority community doesn't quite understand [the selection process]. There isn't any special stuff going on." SDRTA #7 went on to say that his organization's Hispanic members tend to not get certified, because they do not see any advantages associated with certification: "… [Hispanic contractors] don't tend to get into the programs and stuff as much. They don't even try to get certified…. They're all sorts of them out there that just don't pay any attention to the DBE programs, because it's a lot of crap."

Interviewee #SD6, representing a Caucasian male-owned firm, said, "the DBE program doesn't help anyone."

Interviewee #SD31, representing a Caucasian male-owned firm that is DVBE certified, said that he questions the legitimacy of MBE/WBE certification: "DVBEs are different than everybody else. The state monitors our certification yearly. We don't go to some funky non-profit organization and say, 'Hey, guess what — I'm a minority!'" I really question … some of those [MBE/WBE] certifications and how valid they are."

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that less than 10 percent of his firm's sales can be attributed to DBE goals. He said that the firm does not market itself as a DBE — to get work, it relies heavily on the reputation it has established over the past 35 years.

Interviewee #SD44, representing a Hispanic male-owned firm, stated that his firm was previously MBE certified as a Hispanic American-owned firm, but it did not renew its certification because "it wasn't worth it." He indicated that his firm had no trouble getting certified, but working with public agencies as a DBE — particularly Caltrans — was difficult: "It was a pain … all the hoops they want you to jump through to try and sell them a product … was too much of a hassle."

Interviewee #SD46, representing an African American male-owned firm, indicated that his firms DBE certification only accounts for approximately 5 percent of his firm's work. He noted that his firm does not "market" its certification status when responding to bid solicitations from prime contractors. When asked if there are any advantages to being DBE certified, Interviewee #SD46 said, "I don't see any benefits."

### C. Caltrans anecdotes regarding certification

The following anecdotes regarding certification were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**The certification process**

**Most certified interviewees described the certification process as long and difficult.** Interviewee #CT1, a Native American male-owned firm, said it was "difficult" to get certified. He said it took about six months "and that was after I submitted extensive really thick applications." He said it would be nice if the process was shorter, and noted that the people at Caltrans told him that they were understaffed. He said the application was straightforward although they required a lot of information.

Interviewee #CT33, a Hispanic female-owned firm, said that the Caltrans certification process "is okay" but felt Caltrans staff was "non-responsive." She often had to remind Caltrans of certain paperwork and that she was waiting for a response on something she had given to Caltrans three months before the interview. She said delays by Caltrans in processing the company's certification and the company's name change caused problems, since it had to explain to other contractors that the company is certified as both an MBE and a WBE, but that Caltrans was behind on the paperwork.

CATA #2, an African American trade association, stated that the DBE certification process had been "fairly easy" for his personal business, but that he had to struggle with Caltrans to get the agency to recognize a category of petroleum supplier. He also said that the process is perhaps too intrusive, as Caltrans asks for things like the businesses' bank signature cards.

**Several interviewees offered experiences with recertification.** Interviewee #CT31, an African American female-owned firm, stated that the recertification was "burdensome," "cumbersome," and "slow." She stated that the company has been certified for a long time and that "being recertified should not be the issue that it is."

Interviewee #CT46, an Asian American male-owned firm, expressed frustration with the re-certification process, saying that this process involves "a lot of work," and indicated that it is rather difficult to find someone with whom he can speak in person and find out the status of his re-certification application. According to Interviewee #CT46, "you don't even really know what phone number to call anymore. You're always on hold. You don't really know where to begin. You just send your package in. You don't know if they've received your package or not." Interviewee #CT39, a Hispanic male-owned firm, stated that the recertification process was not "too bad" and said that the documentation and paperwork required "was not a huge problem." He recommended that Caltrans check-up and make sure that the people who are claiming DBE status "actually deserve the classification."

Interviewee #CT8, a Hispanic male-owned firm, stated that "CUCP is a problem" and that "[i]t was pretty hard to do." According to Interviewee #CT8, he received recertification paperwork telling him he had to reapply within 10 days of the letter's date even though he did not receive the letter until 3 or 4 days after it was dated. He said that he has called the person with whom he had originally spoke at the CUCP, but that he "cannot get a hold of her to save [his] life," and that "she doesn't return phone calls." Interviewee #CT8 suggested that the DBE certification process could be improved by CUCP's establishing more branch offices so that businesses could visit them in person.

**Most interviewees felt the certification process was ultimately fair.** Interviewee #CT46, an Asian American male-owned firm, stated that there was an "insurmountable" amount of paperwork required in order to become certified, but in the end he felt that this was "a good deal" because "it keeps . . . people that probably aren't deserving or just everybody from getting it." CATA #1, an Asian American trade association, thought that Caltrans' certification process was fair and that there is "no handicap in that process." He said that Caltrans had "substantially" improved upon the time it takes for businesses to get certified, shortening the time period from six months to a month or a month and a half. In his opinion, if Caltrans could further shorten the process, that would be even better.

Interviewee #CT81, a Hispanic male-owned firm, found the Metropolitan Transportation Authority (MTA) certification process to be fair. It was a tough process, but he expected it to be. He was lucky in that he had a very competent person from MTA guiding him through the process.

**Some interviewees described the Caltrans certification process as simple and straightforward (Interviewees #CT10, #CT29, #CT48, #CT51).** Interviewee #CT29, a Hispanic male-owned firm, described the experience at "actually very good." He had the Los Angeles City certification, and under the reciprocity process, he was certified within a day or two.

Interviewee #CT51, a Hispanic male-owned firm, stated that he had had no problems with the Caltrans (or now the CUCP) certification process and that the paperwork "is simple enough if you sit down and do it." He thought that perhaps some people had problems because they do not understand what they are reading or do not take the process seriously. He said that recertification had not been a problem either, since the company had been in the ownership of his family for its entire thirty-five year history. He stated that though the Caltrans investigating process needs to be strong in order to discourage people from abusing or taking advantage of an idea that is "to help those people less fortunate that have the desire to work and want to improve their lives, . . . to do it on paper and complicate life by creating bureaucracy is certainly not the answer to anything."

**Some interviewees expressed confusion over the interplay between Caltrans and other agency certification processes.** Interviewee #CT67, a white female-owned firm, indicated that her experience with the DBE certification process was confusing and frustrating. According to Interviewee #CT67, she was first contacted by Caltrans and the Department of General Services regarding their DBE and WBE programs ten years ago. Five years later, she said, her file was sent down to Los Angeles from Sacramento. Next thing she knew, she was talking to people from the CUCP, who tried to explain the new "umbrella system." She is confused as to why she still received notices from Caltrans. Also, someone at Metropolitan Water District (MWD) said it had their own certification system, which Interviewee #CT67 believes is part of a network that includes the Port of Long Beach and the San Diego School System. Interviewee #CT67 stated that she sent written questions to a representative at Caltrans regarding CUCP. Someone from Caltrans called her and explained that Caltrans certification process was now folded into CUCP, but she is still confused.

She attended a Caltrans workshop in Oakland in the fall 2001 where only three people stood up to say that they were DBE certified. At the workshop, Caltrans had tables set up so that firms could register on-site for DBE certification. Interviewee #CT67 was angered that she had put in so much time to get certified while other firms were allowed to register through what she perceived as an "instant DBE session." Interviewee #CT67 suggested that Caltrans could improve its certification program through better communication.

**Some interviewees expressed frustration related to denial of certification.** Interviewee #CT6, a white female-owned business, stated that the company applied for DBE certification in the early 1990s. The company was originally owned by Interviewee #CT6's father, but after his father passed away, ownership was transferred to his mother. The company submitted an application consisting of a 3-ring binder to Caltrans, but, according to Interviewee #CT6, a Caltrans employee simply disregarded it and "threw it away." The company wrote a letter to Senators Diane Fienstein and Barbara Boxer complaining about the situation. Interviewee #CT6 felt that Caltrans "made a mockery" of his mother and him, since they spent months putting the application together and

received back only an empty binder. The company has not sought DBE (or similar) certification with any other agencies. Interviewee #CT50, a white male-owned firm, tried to certify his business as a WBE. At the time, there was a requirement that if his wife owned less than 51 percent of the business, one had to show exactly what tasks she performed. So, Interviewee #CT50 changed the ownership of the business to be 100 percent in his wife's name, but the process was simply too complicated and he ultimately said, "forget it." He had a lot of business at the time, so he decided there was no need to get certified.

Interviewee #CT68, a self described "mixed-race" male-owned business, was refused certification by Caltrans even though his mother's birth certificate identifies her as "colored." A person at Caltrans told him that he did not qualify for DBE certification because he did not "live [his] life as a Black man." According to Interviewee #CT68, this person could not define for him what this phrase meant, and was "very racist." Interviewee #CT68 said that he argued with this person and eventually got his local Congressional representative involved, but that he later let it go because he understood that having DBE certification would not help his company get work.

Interviewee #CT63, a white male and female co-owned business, was denied certification because the name of the business suggested it was owned by the husband. The denial took 1.5 years to be decided. They were told they could appeal but they let it go.

**Perceived value of certification**

**Some DBEs recognized a value to certification.** A WBE submitting written testimony stated: "I put a lot of my success on having the WBE status and being involved in the various associations [NAWIC and AGC of San Diego]." (Written testimony submitted 1/26/06).

A certified DBE submitting written testimony stated it did not start receiving inquiries and unsolicited requests for proposals until after it received its Caltrans certification, and, only then, on DBE participation goal contracts. He stated: "The program certainly has enhanced our firm's ability to enter and achieve some degree of success in the public sector contracting market." (Written testimony submitted 4/12/07).

**Some DBE firms questioned the value of certification based on the fact they had not received any more work after becoming certified.** Interviewee #CT13, a Pakistani male-owned firm, has been "pretty successful" in the public sector, but not with Caltrans. Interviewee #CT13 stated, "Despite all the effort and money spent getting DBE certification [from Caltrans], I have not received to the best of my memory any direct contract from Caltrans. I have responded to their RFPs. I'm a very qualified person, and my company [is] very qualified, but I don't know why we don't get work from Caltrans."

Interviewee #CT31, an African American female-owned firm, questioned whether the DBE certification process was worthwhile, considering the amount of work that his firm and others receive as a result of being certified – "What is the benefit of being certified by Caltrans or by any other agency when they are not promoting utilization anyway?"

CATA #3, a Hispanic trade association, stated that the DBE certification process consumes a lot of a businesses' time and resources because of the paperwork and documentation required. "Not too many people want to be DBEs anymore . . .," said CATA #3, because of the process and/or because they are not aware of any need to. He said that more of the association's members would get certified if being certified and participating in the program were more rewarding.

CATA #7, a Filipinio trade association, reported that only about ten of their 200 members are certified as DBEs with Caltrans.4 Historically, the program does not work, "it's a lip service." Major primes team up with the same firms over and over and they do not reach out. Nonetheless, he feels there is value in certification. It opens some doors. CATA #7 is glad to see more unification with the certification process. Small businesses do not have the resources to get certified with multiple agencies.

A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: "If this program was a requirement, we would see return on the hundreds of hours that we've spend being awarded the DBE. It would be easier to market our DBE. We wouldn't be used to win work" and "cut" later by the prime contractor. "Again, we strongly believe that if DBE is a requirement and not just a goal, the purpose for which it was designed, for highly qualified firms like ours to get our foot in the door – would be worthwhile." (P.H. Los Angeles, 3/29/07).

An African American consulting firm, testifying at a public hearing in San Diego, did not see the value in certification, "the idea of having to fill out more paperwork or more documentation, it just wasn't worth it … if you go through the hoops to get certified … they just weren't paying any attention to you." (P.H. San Diego, 3/22/07).

A Hispanic female-owned consulting firm stated, at a public hearing in Los Angeles, "most DBEs said they don't have interest in maintaining [certification] … because they were inundated with faxes and calls that did not materialize into any real opportunity." (P.H. Los Angeles, 4/4/07).

A minority female-owned business testified at a public hearing in San Bernardino that the company has not received work in the public sector since certifying six months ago. "We check the various agencies' web sites regularly, we read the newspapers, and any time we hear a proposal that fits what we do then we submit our bids for those, and we've gotten none out of four or five." (P. H. San Bernardino, 3/20/07).

**Some DBE firms explained that having certification can act as a barrier as opposed to a benefit due to assumptions that DBE firms who seek certification are less qualified.** CATA #1, an Asian American trade association, stated that he had no personal experience with stereotyping but heard comments by a federal agency employee (from the Small Business Administration) seven or eight years ago that "DBE" was synonymous with "not qualified."

Interviewee #CT7, a white female-owned surveying firm, said that "there's definitely a stigmatism with being a DBE because it automatically gives the impression that you're new, [that] you don't have any experience, and that there's a risk in hiring you…" She stated also that this stigmatism is "really hard" for them to offset, and that "[u]nless there is a [DBE] goal on a project, we do not tell anybody that we're DBE or minority-owned because of the stigmatism associated with it."

[4] Note most of the 200 members are not owners of their companies but rather employees at other firms.

**Recommendations related to the certification process**

**Some interviewees would like to see unification of certification among different entities.** Interviewee #CT32, an Asian American female-owned firm certified through the CUCP, recommended standardizing the certification process. She described "[a]ll of those certification processes" as being "so long" and said that "[i]t would be great if it was standardized." She said that a lot of paper was wasted and that she did not see a need to be certified, as she put it, "by the feds and by the state and by this agency and that agency. It's ridiculous." She also noted that it was expensive for small businesses to get certified, saying that it costs on average $500 each time.

A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: "The largest challenge I had with [certification] was when the transition happened. I have three certifications. When the central unified came in, it wasn't clear if it covered WBE, SBE, and DBE. Those certifications expired at different times as well. So I was very nervous and very concerned at that time that I was covered." (P.H. Los Angeles, 3/29/07).

At a public hearing in San Diego, an African American DBE consulting firm expressed frustration that "there is so many different agencies you have to potentially get certified with – and then too, you have to maintain them." (P.H. San Diego, 3/22/07).

**Some interviewees suggested fewer requirements upon recertification.** While waiting for recertification, Interviewee #CT31, an African American female-owned firm, was being considered as a potential member of Caltrans project design teams. Interviewee #CT31 suggested that Caltrans could improve its recertification process by requiring only that businesses submit a certified affidavit saying that nothing had changed regarding a company's ownership. Interviewee #CT49, an African American male-owned firm, said that the Caltrans certification process was "a little difficult" and that "some of the things that they . . . ask for . . . went a bit farther that was needed . . . ." He also said that firms had to "turn around and do the same all over again, which, if there had been no change, should be unnecessary." His only recommendation for improving the process was to allow businesses to certify that their business ownership and the like has not changed in the past year (or whatever the renewal period may be).

CATA #3, a Hispanic trade association, suggests Caltrans implement self-certification for DBEs. Several firms suggested Caltrans relax the recertification requirements.

Interviewee #CT31, an African American female-owned firm, suggested that Caltrans could improve its recertification process by requiring only that businesses submit a certified affidavit saying that nothing had changed regarding a company's ownership. Interviewee #CT49, an African American male-owned firm, also recommended improving the recertification process by allowing businesses to certify that their business ownership and the like has not changed in the past year, rather than going through the whole process again.

**Some interviewees would like help becoming certified (Interviewees #CT8, #CT46, and #CT81).** Interviewee #CT46, an Asian American male-owned firm, who expressed considerable confusion over the certification process, suggested that Caltrans have outreach personnel that contact companies by their type of work (e.g., electrical engineering companies) or by name (e.g., company names that begin with certain letters of the alphabet). A small DBE information technology consulting firm who testified at a public hearing in Los Angeles stated: "I think many, many people are still very confused

about the certification process … I usually wind up having to explain it to the primes. They don't know the difference between an SBE, a DBE." (P.H. Los Angeles, 3/29/07).

Interviewee #CT11, a Native American male-owned firm, would like greater communication during the certification process. He would like a company to be able to track the status of their application to alleviate concerns regarding its progress.

**One trade association suggested that Caltrans require all businesses to obtain certification before working with Caltrans.** CATA #2, an African American trade association, believes the DBE certification process is unfair because only DBE firms are required to be certified. DBE firms have to spend precious time and resources dealing with paperwork and a process that non-DBE firms do not have to deal with. CATA #2 suggested that in order for the program to be administered more fairly, all businesses should be required to be certified — whether as a DBE or a non-DBE firm — before they can do business with Caltrans. That way, said CATA #2, the certification program has integrity.

**One trade association suggested streamlining the certification process.** CATA #3, a Hispanic trade association, suggests Caltrans allow businesses to self-certify with a one page form and impose fines and/or imprisonment as punishment for false reporting. He said that though someone would have to enforce this regime, he thought that it might be more cost-effective for both the agency and applicants than the current, paper and time intensive system.

**One witness testified that it would like to see more aggressive percentage requirements for major consulting firms who contract with DBEs and WBEs.** A certified WBE / DBE stated: "It would be very helpful if the certification program here in California was more aggressive in the DBE/WBE percentage requirements when contracting out design work and in linking up major consulting firms with the smaller minority and women owned businesses." (Written testimony submitted 3/14/07)

## II. Public and Private Sector Work

### A. Consortium anecdotes regarding public and private sector work

**Private sector work experience**

**Some of the minority- and female-owned businesses interviewed reported at least some success in the private sector. (Interviewees #1, 2, 9, 11, 13, 17 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 50, 51, TA #1, 2 ).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they do very little advertising in the private sector because their product is based on their reputation; they pride themselves on doing a quality job, paying their employees a fair wage, and always getting the referral and call-back. He stated that 95 percent of their business is repeat customers or referrals.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that people are more open minded and willing to give minority consultants a shot in the private sector. However, Interviewee #2 stated that the market is going through a tough economic cycle and the industry is reflective of that. Interviewee #2 stated that his status as a minority business owner does not affect his business in the private sector. He said that the market has been the biggest factor. He said that his business began to feel the market slowdown in 2007. He does not believe that the impact of the current economy is any different for minority or non-minority business owners.

Interviewee #2 stated his experience in the private sector has been mixed. He has been able to obtain a few of the kinds of projects that he would like work on. He stated that it is 50-50; he reported that this primarily has to do with him operating a new, small firm. He said that it is hard to break into the market and compete. Interviewee #2 stated that the most challenging issue is the marketing and networking. He stated that the best thing to do would be to hire a marketing firm, but that would come at a huge cost. He stated that it is hard to do the work and marketing at the same time.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that they like to work in the private sector, because, in general, the work is more profitable. However, the profitability in the private sector fluctuates with the economy.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that work in both the private sector and the public sector is "great."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the actual work in the private sector and the public sector does not feel different. He stated that in the private sector, there is not as much scrutiny on his rates.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that her experience in the private sector has been positive.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, indicated that working in the private sector, her work has been largely with non-profits and 501(c)(3) organizations with transportation project components Those experiences have been very positive because by the time those companies find Interviewee #18, they are in desperate need of assistance. Her work in the private sector is not much money, but the work has been steady over the years.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, reported that her business has been very successful in the private and public sectors.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, has worked in the private sector and she has been successful.

Interviewee #29, an African American male-owned electrical contractor, stated that all of his business comes from the private sector; he works primarily on residential and commercial buildings. He stated that he has been successful in business for the past 21 years and has a steady flow of work. He stated that his business comes from referrals from contractors.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has been successful in the private sector.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has been somewhat successful in the private sector. She characterized her experience as "okay." She stated that the private sector does not utilize her company's services. She stated that there are big barriers to working in the private sector and the payment policies are horrible.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she has been successful in the private sector; she stated that after years of working with a Southern California utility company, the relationships that she has developed are strong and lead to more work.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she has been successful in the private sector, but noted that she "might not get paid."

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that his first 10 years working in the private sector were very good. He stated, however, that recently project opportunities have been slow.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that he has definitely been successful in the private sector. He stated that he is even happier about the recent changes including that young people are getting into positions of power and looking at things differently. He stated that he is tired of the "good ol'" boy network. He recalled getting a contract and walking into a room at a treatment plant. He stated that the whole room became very quiet and that made him nervous; one of the men shouted: "We do not need any more minorities!" He informed the men that he was on the project and that was not going to change. He stated that this has been a way of life for him but he is tired of it.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, reported that she has been successful in the private sector, but noted that her success is dependent upon the economy; when the economy is good she is successful.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he has had a positive experience working in the private sector. He reported that he is always looking toward the future and at new contract possibilities.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has had a decent experience working in the private sector but noted that there is always a battle to receive payment in the private sector; he stated that they want the work done but they do not want to pay for it.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has had some success working in the private sector but stated that prime contractors in the private sector want to make their own rules.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported that most of his work comes from the private sector. He stated that he has to work harder in the public sector than in the private sector and the rates are "not too good" but he does feel as though he has been successful.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has been successful working in the private sector. He indicated that he has seen more success in the private sector over the past two years than he has in the public sector.

TA #1, the President of the Latino Business Owners of America, stated that most of his members work in the private sector. A few of his members will mix their private sector work with 10 percent public work. Generally members have experienced more success in the private sector. Members often have a better understanding of the private sector, how they can get paid and work on more than any one large project. TA #1 identified several differences between public and private sector work. He stated that projects in the private sector can be large and that private sector contractors or owners have no problem working with DBEs. There are a multitude of different projects that his members can do in the private sector. Also, members can get involved in private sector projects more quickly. Interviewee TA #1 stated that the private sector is more open because the people making decisions are not as restricted as government staff.

TA #2, the President of the Black Contractor's Association, stated that members enjoy the private sector because they are timely paid in the private sector. He stated that subcontractors are paid according to the contract schedule instead of 30-60 days after schedule and after having financed the job. He stated that members are placed in a bad situation if they are required to finance a job before receiving payment.

**Some minority- and female-owned businesses reported negative experiences in the private sector. (Interviewees #14, 25).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the private sector is disadvantaged by budgeting and micromanaging and by the "stakeholders" in the community. Interviewee #14 also stated that there is more volatility in the private sector. He stated that the "politics" in the private sector consist of people from the same background. He stated that there is more "backstabbing" in the private sector. Interviewee #14 described the difference between the public and the private sectors by stating that in the public sector people "cover their butt" whereas in the private sector people "cover their back."

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he did some work for a private firm but it came with a lot of difficulties.

**Some DBE interviewees felt they were unsuccessful in the private sector or otherwise had limited experience working in the private sector (Interviewees #4, 10, 15, 16, 24, 26, 31, 32, 41).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, explained that he does not typically receive private work from a prime contractor reaching out to him, without some contacts. For instance, the private developer that he is working with now came to him because the developer was referred to Interviewee #4 by someone from the San Diego Port District who also knew Interviewee #4 well. Interviewee #4 stated that in 1979 he did work in the private sector. He initially began with clients that he had worked with previously in other jobs. In the beginning it was not that difficult to obtain work in the private sector, but in the mid 1980s a lot of the large firms that traditionally used to be located in Los Angeles started opening branch offices so there was a lot more competition and it became more difficult to obtain private sector jobs. Interviewee #4 also stated that marketing for the small company was not on the top of his priority list, so he would try to do business development only when he had time. He found it more difficult to obtain business and decided to switch and concentrate more on the public sector. Interviewee #4 stated that his company still does about 1 percent in the private sector. Interviewee #4 stated that he cannot really say whether there are any differences between public sector and private sector work because he does so little private sector work. Interviewee #4

stated that he does not really pursue private sector work so he has little experience being used on private sector projects.

Interviewee #10, a DBE-certified African American female-owned accounting firm, did not have any experience working in the private sector.

Interviewee #15, a Hispanic American male owner of an MBE-certified engineering and construction company, stated that in the private sector, a lot of his work depends on the contacts of his company and who he knows.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, noted that working in the private sector is not profitable for his business. He also stated that because the business serves in a niche capacity, companies in the private sector do not care whether you are a DBE or a minority. According to Interviewee #16, working in the private sector is basically a price game.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had very little success in the private sector.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, reported that she does not do any work in the private sector.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that right now business is slow. He stated that commercial liability insurance is extremely high and [it is difficult] to be able to pay that with things being as unstable as they are with the current economic situation. He said it is been like this almost as long as he has been in business after the economic decline following the September 11, 2001 tragedy. He feels he is capable of doing the work, but he just is not getting a fair chance at showing that he can do the work.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he does not have any experience working in the private sector.

**Most Caucasian male-owned businesses reported success in the private sector. (Interviewees #7, 8, 52, 53, 54, 55, 56, 57, 58).** Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that in the private sector a business' ability to obtain work is all about competence. Interviewee #7 thought that general contractors or owners do not care that a business is minority-owned if the job is performed right. In the public sector, however, Interviewee #7 stated that there are goals and contracts that hinge upon whether you are a minority.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that working in the private sector is "excellent" because goals and objectives are clearly defined; deliverables are clearly defined and direction is clear and succinct.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported that they have had good experiences working in the private sector. He stated that they are continuing to improve and there is tremendous room for growth.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, reported success working in the private sector. He reported that they have offices and consultants in multiple locations and felt as though they have been very successful.

**Public sector non-Consortium work experience**

**Most of the minority- and female-owned businesses interviewed reported some success obtaining public sector, non-Consortium jobs. (Interviewees #1, 3, 4, 9, 12, 13, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 30, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 50).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they do work for some governmental agencies and these agencies repeatedly call them because they do quality work and they do not overcharge. Interviewee #1 stated that every time he has tried to bid a municipal job, he has run into numerous obstacles. He provided an example when a non-Consortium agency was bidding out too large a scope of work for the problem presented. In another instance, Interviewee #1 discussed a situation where the non-Consortium agency was requiring certain license requirements that were not appropriate for the work required. Interviewee #1 characterized this as a lack of knowledge and has prevented him from trying to bid on public sector projects.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that most of his public sector work is for local agencies, including the city and county of San Diego. He stated that his company does a fair amount of work for the San Diego County Water Authority and a little work for the Port District and some public school projects. Interviewee #4 stated that his company has been successful in public sector (non-Consortium jobs) because over the years he has been able to establish working relationships with a lot of the prime firms. The prime contractors already know his company and what he can do and they feel comfortable with Interviewee #4. Interviewee #4 stated that after his business was certified by Caltrans in the 1990s he tried to shift his focus to public sector work. When he first started in 1979, his company did more residential work. Today, however, his company does 99 percent public work. Interviewee #4 stated that it is a lot easier to deal with the owner agencies rather than private developers because with private developers you never get a good feeling about what their expectations are whereas with the owner agencies the scope of work is well defined and they tell you exactly what they want so you prepare your proposal based on what they want.

Interviewee #4 stated public sector work is a lot easier and he enjoys the work better than private sector work. Interviewee #4 stated that his current private sector work involves improvements in two existing marinas to include putting in land site improvements, buildings, parking lots etc. On the public sector side, Interviewee #4 stated that his company has developed a reputation in the arena of underground utilities, and does a lot of work related to water, waste water, recycled water, pipelines, pumping stations, and all sorts of work related to storage and transportation of water. Interviewee #4 stated that there is no difference in the private or public sector jobs in terms of whether he is a sub or prime, in either sector, he is generally a subcontractor. Interviewee #4 stated that the scope of the work is generally the same whether it is the public sector or private sector. He said that he still has to go through the same steps in terms of collecting data to examine and make samples of the soil, and then test them in the laboratory and do engineering analysis. He explained, the steps are the same but what you may be looking for is different. In terms of the amount of the contracts, he stated the

private sector projects were generally small residential projects (like a single family residence or subdivision) and the public sector projects can be a higher dollar value and last longer.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that most of their work comes from the non-Consortium public sector. He stated that in the public sector, the work is also good although the work is generally not as profitable and payment can be slow. Interviewee #9 stated that, in general, his experience on Consortium projects is the same as his experience on other public sector projects.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that in the public sector, their general work experience has been very good because most of their business is generated based on their qualifications and their past project delivery.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that work for other public agencies is similar to the work that he does for the Consortium. He stated that he is currently working on a project for the City of San Francisco that has "a lot of new age type requirements." Interviewee #13 stated that he does a lot of work for smaller agencies and they do not have as many lengthy requirements as do the larger agencies. He stated that the lengthy requirements are "not a DBE thing," However, he does not have the same legal resources as do the larger companies working for larger agencies. He suggested implementing a legal help desk to be made available to companies.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that her experience in the public sector on non-Consortium jobs has been excellent — her company is respected and she does good work. Interviewee #17 stated that the company's MBE/DBE/WBE status truly acts as a door opener, and it gives you a "toe in."

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated that non-Consortium public sector jobs make up the most of her work. Interviewee #18 indicated that the notification and qualification process for non-Consortium public sector jobs has been much better and easier than working with the Consortium. These agencies and entities are much more accessible.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, reported having been very successful in the public and private sectors.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had a good experience working on non-Consortium public sector projects. She said that they have certification monies set aside.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he had been somewhat successful obtaining non-Consortium public sector jobs. He stated that for the first four years of his business, all of their work was as subcontractors and without certification, it would not have been possible.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that 100 percent of her work experience is in the public sector and she has been very successful.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that success in the public sector varies from agency to agency. He stated that there is less risk in not getting paid on public sector work, but it takes longer to get paid, particularly with the City and County of L.A. He stated that you must develop a level of trust with the agencies to become successful and that establishing relationships is key.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that his company has been very successful in the non-Consortium public sector. He attributed this success to perseverance.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, felt that she was successful obtaining work in the non-Consortium public sector.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her work in the non-Consortium public sector has involved school districts and water districts projects. She stated that Proposition 209 has supposedly precluded large firms from using DBEs. She has had no difficulty in obtaining work and feels as though she has been successful in the public sector.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, felt that she has been successful in the non-Consortium public sector.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she has been successful in the non-Consortium public sector, but noted that she "might not get paid."

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that overall he has had a very good experience working in the non-Consortium public sector. He stated that he had five very profitable years while working on a public project for the Los Angeles World Airport. He stated, however, that he felt he had to make compromises on the public sector non-Consortium jobs and ethics was sometimes an issue.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has done a lot of work in the public sector. He has done public sector work for the City of Palm Springs and the San Fernando Valley and all have turned out well.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that her experience in the non-Consortium public sector is about the same as in the private sector; it is about a 50-50 split between public sector and private sector work. She stated that she has been successful in the non-Consortium public sector, but it could be better. She said that sometimes when you have a small company, the Consortium and big companies think that you are inept. Interviewee #39 stated that she was hired by the Department of Homeland Security to do a large project and she was able to take the lead. She stated that she had to hire a large firm to be a subcontractor and that turned out to be very successful.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has been successful in the non-Consortium public sector, but feels that the

relationship between the prime contractor and the subcontractor should be monitored. He stated that often the prime contractor abuses the subcontractor and requires the subcontractor to perform additional work beyond the scope of the project without additional compensation.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she was successful in the non-Consortium public sector and referred to a lucrative account with a city government public library.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he has been extremely successful working in the non-Consortium public sector work; he cited a contract with a community college that was very lucrative.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, reported that she has had the most success working for state agencies and the federal government.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has been very successful in non-Consortium public sector; he stated that these were competitive bids and 8(a) contracts which are set-aside contracts and non-compete.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, indicated that he has had a positive experience working for schools but stated that there is not enough steady work.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has had an okay experience working on public sector non-Consortium projects. He reported that he has run into issues with pricing and stated that all public sector contracts involved bidding wars.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he is doing okay working in the non-Consortium public sector and he is trying to become more successful. He stated that there is a much higher "doorstep" in the public sector and he has to try even harder to get into the private networking in the public sector.

**Some minority and female-owned businesses reported difficulties in pursuing work on public sector, non-Consortium jobs (Interviewees #2, 10, 14, 16, 23, 29, 31, 32, 41, 51, TA #1).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has no experience working in the public sector. He is not certified with any of the Consortium agencies. Though Interviewee #2 has been certified with Caltrans for approximately one year, he stated that the certification has not provided any public work, though he used to be employed by Caltrans. Interviewee #2 stated that he has tried to obtain work through Caltrans but has had no success. He stated that the agencies only encourage companies to work with minorities but they do not require it. Interviewee #2 stated that he has sent letters to prime consultants expressing his interest in projects but has received no response. Interviewee #2 stated that all of his work has been from the private sector because it is much easier to obtain work in the private sector. He stated, if the economy is doing well, he can obtain work in the private sector with a simple phone call and interview. In the public sector, however, he stated that there are various other requirements

to fulfill. To start, you have to have public sector experience to apply for public sector work and this has been a problem for those with no public sector experience.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that on non-transportation public sector projects, the negotiation process as between them, the prime contractor, and the government has been slow and has held up the process.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the public sector has a lot of challenges overall. Interviewee #14 stated that the political structure in the public sector is "pretty heavy" and is not necessarily conducive to efficiency.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his experience on non-Consortium jobs has been terrible. Interviewee #16 noted that these agencies only use their local favorites and there is no reference checking about various companies' abilities. Interviewee #16 indicated that for the most part, the schedules set for non-Consortium jobs are generally "ridiculous."

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported mixed success obtaining non-Consortium public sector work. He stated that the City of Los Angeles, in particular, has cut back on rates and business opportunities with them.

Interviewee #29, an African American male-owned electrical contractor, stated that he has had only one project in the public sector at UCLA 15 years ago.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that with respect to doing business with non-Consortium public sector agencies, he feels there needs to be some sort of way of negotiating with the government entities as opposed to negotiating and putting bids in with the prime contract holders. There is no way to judge who or how the subcontractors are chosen and picked. Are they picked by lowest bidder, off of gut instinct and/or feelings, are the relationships established beforehand as the project goes up for bid and the prime contractors apply with that as a part of their package? Interviewee #31 reported that it is hard to figure out how to get in on the work that is out there.

Interviewee #31 stated that he was capable of doing the work and that he hass been involved in one way or another his whole life since the age of about 15 ½ years old. He knows the business of block/brick-laying and building walls inside and out. He stated that if the dealings with prime contractors were cut out, and he could deal directly with the government agencies, he feels the games and questioning would be out of the door and that he could get more work and business would be much better. There is no chance for subcontractors to compete when big businesses can do the entire project and charge less in some areas and more in others especially when they own the equipment and rental fees are eliminated. He stated that he feels he could be doing so much better in terms of work in the non-Consortium public sector. It has been a couple of months since his last job of note and he is feeling the pressure to get the next one, not only for himself, but for his family and the men and their families who depend on his projects.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated he had no experience working in the public sector; "it hasn't happened yet."

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, has experience working in the public sector and noted the process of obtaining work takes a while. He believes that most prime contractors do not reach out to DBEs.

TA #1, the President of the Latino Business Owners of America, stated that his members have experienced challenges working in the public sector. In the public sector members must divert attention away from revenue and spend approximately two weeks working on a bid that they do not know they will win. Therefore, right away members tie up part of the bond. By nature this process is discouraging. Interviewee TA #1 stated that most of the companies who bid on projects are structured so that they have someone in place whose responsibility is to bid on such projects. Also, most members find that they need to have a relationship with the contractor before the bidding. If they wait until they receive outreach, the odds of participating are not good.

**Most Caucasian male-owned businesses reported success in the non-Consortium public sector. (Interviewees #5, 8, 52, 53, 54, 55, 57, 58).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated public sector work pays much better and more quickly than in the private sector. The amounts of the contract are greater in the public sector.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that work in the public sector is very good but contracts are "fuzzy;" he does make money, however, because of the change order process. He stated that the bidding process, the directions, and the goals and objectives are cumbersome.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported having worked on a Caltrans project. He stated that he has been successful due to his firm's reputation and also because they have a relationship with their manufacturer who is a source of positive referrals for them.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, reported success working in the non-Consortium public sector; he cited work for multiple public agencies on different projects.

**Work experience with the Consortium**

**Some minority- and female-owned businesses interviewed reported success in obtaining work with the Consortium (Interviewees #10, 11, 12, 14, 16, 17, 19, 20, 22, 23, 24, 25, 27, 28, 29, 33, 35, 37, 42, 43, 45, 48, 49, 50).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they work on a task order basis. Interviewee #10 stated they have had a good experience working on Consortium projects in the past; this was a positive experience and payments were timely. Interviewee #10 stated that in terms of working in the public sector, Orange County has the best method of allocating work; they "rotate work" around among companies. Interviewee #10 stated that they also do public sector work for other government entities.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that work in the public sector is "great."

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that in the public sector, has had a good experience working on Consortium contracts. He stated that "they are the smoothest of all. They pay on time. . . They treat DBEs very well." Interviewee #12 stated that they are paid within 30 to 45 days on Consortium contracts which is very good for the public sector.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated he has had a good experience working with the Consortium. He said that the Consortium is good at paying on time and he has developed good relationships with Consortium staff. Interviewee #14, stated, however, that Metrolink and SCRA are formed of a consortium of political entities consisting of politicians from different counties. He stated that the political structure is not always conducive for the best work to be completed.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, recalled that for the most part, his work on Consortium jobs has been positive (L.A. County MTA and Metrolink). Interviewee #16 stated that the Consortium entities may not engage in as much project publicity or outreach as they should, but they are not "discriminatory" like non-Consortium agencies.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has also had very positive experiences in working with the Consortium. Interviewee #17 functioned as a prime consultant on an OCTA project, and it was successful; she has enjoyed working with the agency.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, reported that she has had a few projects with Metro, Westside Extension. She stated that their method of payment by direct deposit was wonderful.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that he has only worked on one job with the L.A. County MTA, but it was very good.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has been successful working with the Consortium. She said that the Consortium can suggest to prime contractors that they hire her business, but the Consortium cannot enforce that.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he has done work with MTA, Orange Line, Mid-City Eastside expansion and the Canoga Park expansion. He has also subcontracted with a contractor on a joint venture.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported having worked with the Consortium. He noted that receiving payment from prime contractors is an issue on Consortium projects.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she has been successful obtaining work with the Consortium including jobs with Metro, Metrolink, and Orange County Transit. She said that she liked the way they compiled overhead rates.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she was successful on projects that she performed for Metrolink and Metro. However, she has not been successful in obtaining additional contracts.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that overall, he has had a positive experience working on Consortium jobs. He said that he has been very successful. He stated that he would like to be a prime contractor, but feels that he cannot compete with larger firms.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, reported that she has had a contract with L.A. County MTA for the past 15 years that has been successful and lucrative.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she has been successful working for the Consortium, but there is a limit to that level of success.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported that he has worked with the L.A. County MTA and felt as though he was successful in obtaining work for which he was qualified; he was successful in his ability to perform the work required.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported success in obtaining work with the Consortium.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he is currently working on a project for the MTA and he had to lower his rate in order to build his reputation. He stated that he is trying to build his firm and his contract with the L.A. County MTA is helping him to do that.

**Some minority- and female-owned businesses interviewed reported difficulties in connection with obtaining work with the Consortium (Interviewees #13, 15, 18, 21, 26, 29, 31, 32, 34, 38, 40, 41, 46, 51, TA #1).** Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the Consortium will not accept an overhead rate over 150 percent but his actual overhead rate is much higher. As a result, he stated that a lot of his colleagues have encouraged him to pursue work in the private sector.

Interviewee #15, Hispanic American male owner of an MBE-certified engineering and construction company, reported that the agencies tend to be "lazy" in his experience on Consortium jobs.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, noted that many of her efforts related to Consortium jobs have been unsuccessful, and she "can not crack" the agencies. OCTA is different, and she puts them in a separate category than the other members of the Consortium.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she has no experience being utilized on Consortium projects. She stated that she has been in business for 25 years and it is very difficult to break into the

transportation industry. She stated that the RFPs do not often make sense for small companies. She provided an example wherein the RFP required advertisement placement in 22 markets and work with a budget of $5.0 million, when, in fact, the actual contract was for a local market and a budget of $500,000. She contended that the contract price was so small that a small business was doomed to fail if it won the award.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has been successful obtaining Consortium projects, but she has not been successful in keeping them. For example, she was a subcontractor on an L.A. County MTA project to do an art project. However, the art department slowly relieved her of her duties. She observed that LA County MTA wanted to complete the project themselves.

Interviewee #29, an African American male-owned electrical contractor, stated that he has never been contacted to work on a Consortium project.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he does not have a negative experience to speak of as far as it relates to his experiences working on Consortium jobs. He stated that small businesses need to have the opportunities to compete in order for them to be successful and he feels like he has not been in a position where his business has been able to compete.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he is still working on contacts and networking so that he can obtain a Consortium contract.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, does not feel as though she has been successful obtaining work with the Consortium.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that there are some drawbacks to doing work with the Consortium. He stated that there is a great amount of structured paperwork noting that about "80 percent of the job is paperwork." He stated that the Consortium should put people to work whose sole purpose is to make sure that subcontractors receive contracts, and the versatile larger firms are not hoarding all of the work for themselves that is supposed to be subcontracted out.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has not really been successful on Consortium projects. He stated that working on a project and then having to wait on payment almost put him out of business.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has not seen Consortium bids issued for his company's services; he has not seen any in a while.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported that while he does have experience working with the Consortium, he has not received as much work as he would like to have; he noted that there are "millions of dollars of work that we do not get."

TA #1, the President of the Latino Business Owners of America, stated that his association's members' experience working on Consortium jobs is the same as the general experience in the public sector (they have experienced challenges more fully described above). Interviewee TA #1 could not provide any specific examples of the experience of his members on Consortium projects but stated that generally there are no real success stories.

**Some interviewees reported issues with the Consortium agencies' practice of utilizing the "work bench" or "on call" to allocate work. (Interviewees #10, 12).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they work on a task order basis. She recommended that other Consortium agencies mirror the Orange County processes and procedures. Interviewee #10 stated that with respect to the other Consortium agencies, even though their firm is "on the bench" they are not guaranteed work; she does not necessarily see the purpose of "the bench." She stated that they already went through the qualification process so it does not make sense for them to be placed on the bench but not receive any work from it. Interviewee #10 stated that she is not even enthusiastic about getting a contract while on the bench because you have to re-bid the work all over again. Interviewee #10 recommended doing a study of the audit benches of the Consortium agencies to examine the task orders, who is awarding them, and to whom they are being awarded to determine whether there is any bias.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that his work as a subcontractor on Consortium projects has been good on projects that are well-defined; he has not had a good experience with "on-call" projects. For example, he said that they have an upcoming on-call engineering services contract (the "engineering bench") with Metrolink for which they are a subcontractor and they have not seen any work yet. He stated that you are at the mercy of both the client and the prime contractor, and sometimes you will never receive any work.

**Some minority- and female-owned businesses interviewed reported having limited or no experience working with the Consortium (Interviewees #1, 2, 4, 35, 39, 44, 47, TA #2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they have not done any work for any of the Consortium agencies. He said they would be interested in doing work for the Consortium agencies but not if it meant dealing with the type of hurdles they had encountered with other public sector agencies.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has no experience working on Consortium jobs. He stated that he is not certified by the Consortium. He stated that he is not aware of any other consultants' experiences with the Consortium. Interviewee #2 stated that he knows other MBEs who are certified with Caltrans and those MBEs have not been successful in getting work with Caltrans.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that his company has not done any work as of yet for any of the Consortium member agencies because the opportunity never came up. Interviewee #4 does not have any experience being used on Consortium projects. His company has pursued projects with the Consortium (L.A. County Metro) but not actively because most of the projects are in the Los Angeles basin area and he cannot compete with the other geotechnical firms who are local. Interviewee #4 explained that his prices would be higher and a prime contractor would likely pick a local with a lower price.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she has no experience working on Consortium projects, but she is interested in pursuing work with the Consortium.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has no experience working on Consortium projects, but he would like the opportunity to work on a project.

TA #2, the President of the Black Contractor's Association, explained that many of his members stay away from public sector jobs because they have not seen any real benefit to competing for these jobs. TA #2 stated that members are not getting pulled into the loop and they are only called on jobs for which minority participation is mandated.

**A couple of Caucasian male-owned businesses reported having had a positive experience working with the Consortium. (Interviewees #55, 58).** Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that he has worked with multiple Consortium member agencies and has been very successful on these projects.

**Other Caucasian male-owned businesses reported limited or no experience working with the Consortium. (Interviewees #3, 5, 8, 56).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated the last time he worked on a Consortium job was in early 2000. The projects he did at that time did not end up requiring any subcontractors – it was all within his area of expertise or others in his firm.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that his company has not worked on any Consortium jobs to his knowledge, however, they have worked on projects for the North County Transit. He said this may be because the teams that they align with sometimes are required to utilize a DBE but, because his firm is not a DBE, the prime contractors may not use them. Most of the prime contractors that they work with are civil engineering firms. Interviewee #5 stated that the company has lost some jobs recently with government agencies because it is not a DBE.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he has never done any work for the Consortium although he has tried to obtain work with the Consortium in the past.

**Differences between private sector and public sector work experience**

**Interviewees reported some differences between public sector and private sector work. (Interviewees #1, 8, 11, 12, 13, 14, 16, 18, 29, 30, 31, 33, 37, 39, 40, 45, 47, 55).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that his company is not the lowest price in the county or the state but his clients know that he does quality work and is dependable. He stated that the lowest bid is not always the best value, but unfortunately the state and the municipalities always go for the lowest bid.

Interviewee #8 stated that there is no difference in the type of work or price of the contract between the public sector and the private sector. He stated, however, that the private sector is "meaner." He

stated the prime contractors in the private sector look to find a glitch in the contract or the work completed.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that both the public and private sectors present different work environments for her business. Interviewee #11 said that her work for the Consortium is very narrow in scope and she has no flexibility to go outside the scope of work. In contrast, Interviewee #11 stated that in the private sector, she has more leeway to make recommendations and go outside the scope of work. Interviewee #11 also identified the scope of work and training requirements as differences between working in the private sector and the public sector.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that in the public sector there is a greater consideration to the size of the firm and reasonable project schedules. In contrast, in the private sector, there is sometimes a complete disregard for who is doing the work and payment can be held up. Interviewee #12 stated that his work as a subcontractor in the private sector is characterized by a faster pace, demanding schedules, and poor payment.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that there is not as much red tape in the private sector and it is easier to get a project started.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the resources are better in the private sector. He said that there is better qualified talent in the private sector marketing departments and noted that the private sector has a better understanding of the marketing investment. In contrast, Interviewee #14 stated he feels that people in the public sector generally are not as qualified. He said that there is less accountability in the public sector and it is more difficult to fire someone. Interviewee #14 stated that the public sector agencies do not have the same understanding of the marketing process as do the private sector agencies.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his work in the public and private sector is different. In the public sector, Interviewee #16 functions as more of a systems integrator and manufacturer. In the private sector, Interviewee #16 functions mostly as a supplier of product and sometimes a contractor if a company has a small project, but not on big scale projects.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, indicated that the work she does in the public and private sectors is largely the same, but noted that the difference depends on the scale of the project.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that private sector work is much more flexible and not as rigid as public sector work in terms of regulations.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the bidding process is different as between the public and private sectors.

Interviewee #29, an African American male-owned electrical contractor, stated that there is a significant difference between work in the public sector and the private sector. He stated that there is

more responsibility working in the public sector; you have to maintain all of your insurance paperwork and "workers' compensation is another big one." He said that it is hard for small businesses to meet the requirements of public sector work because of the rigorous qualifications to be able to obtain such work.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there is stringent competition within the public sector as it relates to the award of contracts and working in the public sector. He said that there is more paperwork and strenuous regulations in the public sector that have nothing to do with increasing his performance or output or outcome of the project.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that some of the major difference between private sector and public sector work are the scale of the projects and the politics that go on behind the scenes to get the projects. He said that the price does go down significantly when considering the differences between public and private sector work.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that there are more opportunities in the public sector for her type of business.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that private sector and public sector projects are completely different. He stated that in the private sector contractors can speak directly to the decision maker and have the ability to negotiate. He also stated that the private sector is more flexible, and larger firms can go after small projects. In the public sector, however, the work directive, requirements, and pay schedules are fixed and slow.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that the quality of work is the same although the discipline is different.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the public sector has different reporting and other requirements than the private sector.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that there is a monetary difference and a difference in the contract compliance aspects of her work as between the private and public sectors.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that receiving payment in the private sector is always difficult. In contrast, he noted that payment by the federal government is different and more prompt.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that although the scope of work is the same, the profit margin in the public sector is much higher than it is in the private sector (15-40 percent in the public sector as compared to 5-8 percent in the private sector). He stated that his firm prefers work in the public sector.

TA #2, the President of the Black Contractor's Association, stated that members are not timely paid in the public sector. He said that public sector jobs pay well and are plentiful, but the jobs are also

much harder to obtain. He also stated that members find more discrimination in the public sector. TA #2 stated that there are several differences between public and private sector work. He said that most private sector work involves homebuilding while public work involves commercial construction. Generally, the contract amounts are larger in the public sector. He also said that there are fewer DBE prime contractors in the public sector.

**Other interviewees reported no differences as between private sector and public sector work. (Interviewees #15, 17, 24, 30, 32, 34, 35, 36, 38, 42, 44, 46, 49, 52, 54, 57, 58).**

**Anecdotes regarding businesses acting as prime contractors and subcontractors**

**Interviewees reported various reasons behind their decision to act as prime or subcontractor. Some interviewees reported their decision to act as a prime contractor or a subcontractor is dependent on the project; some interviewees reported a preference to act as a prime contractor.** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that his business acts as a prime contractor or a subcontractor "because that is where the work is."

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he would rather be a prime contractor than a subcontractor. He said that market conditions dictate which role he plays. He stated that when you are a subcontractor you are at the mercy of the prime contractor because of the payment arrangement. Interviewee #2 stated that he prefers to have a direct relationship with clients because they honor payments. Interviewee #2 said that he has had prime consultants default on payments on three separate occasions; the prime contractors were architects.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that most of his work is as a prime contractor because he has a particular approach to environmental projects – he buys contaminated property and cleans it up and resells it. He stated that you have to have money to do it, and banks do not loan money to buy contaminated property.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that their decision to act as a prime or a subcontractor is dependent on the work that is available.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she acts as a prime contractor because that is how she chooses to bid. She does act as a subcontractor on occasion in the private sector, but she would rather be a prime contractor. She stated that a lot of prime contractors call her to participate on public sector bids because she is on a list of small businesses, however, because her work is so specialized, they often contact her to do work that she is not qualified to do. Interviewee #11 stated that she does act as a subcontractor in the private sector, however, she would prefer to act as a prime contractor.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that they base their decision whether to act as a prime contractor or a subcontractor on the expertise involved and their knowledge of the client. If both components are strong, then they will act as a prime contractor.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he prefers to act as a prime contractor on a project because that gives him more control. He stated, however, that a large number of contracts are too large to act as a prime contractor, and acting as a subcontractor gives him the opportunity to work on a lot of difference projects. Interviewee #13 stated that "teaming is the name of the game."

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that their decision to act as a prime or a subcontractor on a contract is dependent on the type of contract. He indicated that their company will act as a prime contractor when their specialty is the primary focus of the contract. Interviewee #14 stated that their company will act as the subcontractor when other services are more important on the contract then theirs.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, also noted that his company generally works as a prime contractor because they cost their jobs as project managers – they're involved some way in every single project.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his business predominantly functions as a prime contractor because of its line of products that it develops; it does not usually buy and resell products.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the business functions more as a prime consultant because the business is small. Interviewee #17's goal has been to build a reputable consulting practice, to grow, and to be competitive.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, typically functions as a prime contractor because her work is very specialized. Much of her work as a prime contractor she undertakes by choice rather than in a subcontractor arrangement. Interviewee #18 builds the partnership that is going to run a project or functions as a part of a team.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, indicated that his business acts mostly as a subcontractor, but it is dependent on the project.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she typically acts as a prime contractor and if the client asks her to take the lead she will bid accordingly. Interviewee #26 acts as a subcontractor when the work is a small component of a larger project.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that his business works mostly as a prime contractor because of the type of work that they do.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, reported that her business chooses to act as a prime contractor or a subcontractor depending on the opportunities available and what is more advantageous; it is dependent upon the size of the project and the scope of work.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her business principally acts as a prime contractor because she wants to be in control of her business and to be paid on time.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that her business acts as a prime contractor because she has the capacity to provide the services requested.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that his decision to work as a prime contractor or subcontractor is based on the size of the project and the types of design disciplines required for the project.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that when he acts as a subcontractor for the L.A. County MTA it is because of the skill sets that are needed. When he is the prime contractor, he will utilize subcontractors to complete other necessary work on the project.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, stated that they typically go after the project itself as a prime contractor rather than signing on later.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that they typically act as the prime contractor.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that his decision to act as a prime contractor or a subcontractor is dependent upon the type of contract they have applied for and the scope of work.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he will bid as a prime contractor if the requirement is purely electrical; if the work requires other services then he will not bid on it because it is beyond his capabilities.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported primary work as a prime contractor due to the nature of his business.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported that he sometimes is hired as a prime contractor on smaller projects, but their business is not set up to act as a prime contractor on larger projects.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that they act as a prime contractor on mid-size projects but as a subcontractor on larger projects. He stated that if the project requires a bond of $1,000,000.00 or more they will get a larger firm to act as the prime contractor.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported that his decision to act as a prime or a subcontractor is dependent on the size of the project.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they act as a prime contractor due to their size and capabilities; they favor being a prime contractor because it is all-inclusive.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that they act as a prime contractor due to their size and a preference to be in control of the project.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that their decision to act as a prime or subcontractor is dependent on the scope of work encompassed in the project.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, reported his firm's decision to act as a prime or a subcontractor depends on the size of the project and the disciplines required within the scope of work.

**Other interviewees reported primary work as a subcontractor due to market conditions and other factors. (Interviewees #4, 8, 21, 22, 25, 40, 50, 56, TA #1, 2).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that his business acts as a subcontractor because there are very limited opportunities for geotechnical consultants to be a prime. In most projects the owner hires either a civil engineer or architect to be the prime and then his business would serve as a subcontractor. Interviewee #4 stated that his company is a subcontractor most of the time and always has to market themselves to the prime because there are never any RFPs or RFQs for geotechnical workers.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that the reason that his business acts as a prime or a subcontractor is based on the "ability capacity" — he made the analogy to bonding capacity in the construction industry. He stated that public contracts often require extensive and specific experience.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that when her business acts as a prime contractor, it has been as a federal contractor, which system is set up for small businesses. When she worked as a subcontractor, she felt it was because it was advantageous for the large firm to work with a small firm. She also felt the RFPs are designed for small businesses not to get business.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that bonding is the principal reason that his firm does not bid as a prime contractor.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that given the nature of his business, bidding as a subcontractor is more feasible in terms of obtaining work, particularly on large public sector projects.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that his company typically is used to fulfill the DBE requirements placed on larger majority owned firms; they typically cannot compete for the larger contracts.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that his company is not big enough to act as a prime contractor.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that his firm acts as a subcontractor because he would have a difficult time regulating so many employees; otherwise he would like to bid as a prime contractor.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, stated that his firm is very specialized and are not able to oversee work outside of their area.

TA #1, the President of the Latino Business Owners of America, stated that members act as a prime or subcontractor depending on the size of the business and the financial status. Many clients will not contract with a company that has no financial wherewithal to handle a project.

TA #2, the President of the Black Contractor's Association, stated that most members are subcontractors because most members specialize in one trade or another, often in residential or trucking industry. He explained that it is a lot easier to manage a business in a smaller specialized area.

**Several interviewees reported that there are DBE prime contractors working in the Consortium transportation industry. (Interviewees #3, 4, 7, 10, 12, 13, 15, 17, 18, 20, 22, 24, 26, 30, 31, 32, 34, 39, 41, 42, 46, 51, 52, 54, 55, 56, 58, TA #1, 2).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that there are DBE prime contractors. He stated he is aware of two Indian partners who became prime contractors, and he recalled one other DBE prime contractor whose name he could not remember.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, was aware of two minority-owned prime contractors in San Diego although he did not believe they were DBE certified; one is a structural engineering firm and the other is a large geotechnical firm. Interviewee #4 indicated that he believed that there are no DBE prime contractors because to qualify as a DBE, there is a threshold amount that the firm can earn, and once the firm is successful they automatically exceed that threshold and can no longer qualify as a DBE. Interviewee #4 stated that he believed the structural engineering firm likely started out as a DBE.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he is aware of a female prime contractor who bonds construction. Interviewee #7 is also aware of two or three minority prime contractors who work in securities and construction; however, Interviewee #7 did not know if any of these businesses were certified as DBE. Interviewee #7 thought that if any of these businesses were certified as DBE the owners would not necessarily tell subcontractors.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that there are "quite a few" DBE prime contractors.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that there are DBE prime contractors and they know who their competition is. He stated that the number of DBE firms has changed over the past five or ten years, in part, because they either graduate from

the DBE Program or are purchased. He stated that his company is part of the "new wave" of DBEs. Interviewee #12 stated that they had probably worked under a DBE prime contractor but not often.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that there are DBE prime contractors but there are not too many in his field.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that her firm has worked with two DBE prime contractors and both times it was a good experience.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there are DBE prime contractors but not many. He has worked under a DBE prime contractor.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that there are DBE prime contractors working in the industry but there are not many of them.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that she is a DBE prime contractor although she was not aware of any others.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having observed one or two DBE prime contractors over the past ten years.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that he has never paid attention but that he was sure that there were DBE prime contractors working in the industry.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they are aware of DBE prime contractors working in the industry and utilize them when it makes sense.

TA #1, the President of the Latino Business Owners of America, stated that he is aware of approximately five DBE prime contractors who are working on a regular basis. He stated that his members have worked with or under a DBE prime contractor.

TA #2, the President of the Black Contractor's Association, stated that he is aware of one prime contractor that operates as a general contractor and is 8A certified by the SBA. He also stated that he is aware of two prime contractors that are certified with Caltrans, one is a woman-owned firm specializing in military projects and the other is a WBE engineering firm. He also stated that he is aware of a former prime contractor who returned to subcontracting because he could not handle the headaches of being a prime contractor and sending other subcontractors work. TA #2 was not sure whether any of his members had every worked with or under a DBE prime contractor.

**Some interviewees however reported limited knowledge, if any, of DBE prime contractors working in the Consortium transportation industry (Interviewees #1, 2, 5, 6, 8, 11, 14, 16, 35, 36, 37, 38, 40, 43, 45, 47, 48, 49, 50, 53, 57).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know any MBE or DBE prime contractors. He believes it is because there are not a lot of minorities in the engineering field and he stated, typically people go out on their own and pursue employment. He stated that it is a challenge

to minorities to venture out and sometimes people venture out for a couple of years and find they that cannot get work. Interviewee #2 stated that he has never worked under a DBE prime contractor.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated he does not know how many electrical engineering DBEs there are but believes there are not many in San Diego. Interviewee #5 stated that his company specializes in lighting consulting and as he understands there are no DBEs in lighting consulting.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, did not know of any DBE prime contractors. He stated that they are not advertised as much. Interviewee #6 was aware of two other DBE subcontractors: a trucking company and another company involved in materials recycling.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, was not aware of DBE prime contractors working in their line of business.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, was aware of one prime contractor who might have been a DBE but he was unsure whether the contractor was DBE-certified.

**Several interviewees had worked with, or under, a DBE prime contractor. (Interviewees #9, 10, 13, 15, 17, 18, 20, 22, 23, 24, 27, 29, 30, 31, 33, 46, 53, 54, 55, 56, 58).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated he was not aware of other DBE prime contractors in the engineering and architecture fields. He stated that most of the companies get too big to meet the Federal size standards for the Federal DBE Program. If a firm were to act as a "prime contractor a lot and won a lot of contracts, they would graduate out of the DBE Program; "that is what happened to us." Interviewee #9 did indicate, however, that he has worked with DBE prime contractors within the past four years, approximately four or five times; all of these were in the public sector. He stated that that has been a positive experience and noted that DBE prime contractors understand the "situation" of other DBEs.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had worked for a DBE prime contractor a few years ago in Oakland, California.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has proposed together and even worked as a subcontractor with other DBE prime contractors. Some DBE prime contractors have performed a subcontractor role with Interviewee #17's company.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, has worked with other DBE and WBE prime contractors. Interviewee #18 is more inclined to work with sole proprietors.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, believed that he may have worked as a second-tier subcontractor under a DBE prime contractor.

Interviewee #29, an African American male-owned electrical contractor, worked with a DBE prime contractor about 15 years ago.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that technically he had worked with a DBE prime contractor in that the company was legally owned by a woman and was classified as a WBE; that is a large part of how and why they got the majority of their contracts. However, the company was only owned by the female in the sense that her name was the one used as the legal owner. Interviewee #31 stated that he had never seen her on a project in the time that he had dealings with that company; the husband was the one running the business and had worked in the industry his entire life. The husband should have been the one classified as the owner.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, has worked once or twice with or under a DBE prime contractor.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, believed that he may have once worked with or under a DBE prime contractor.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, stated that they are currently working on a project with a DBE prime contractor; the project is almost 80 percent complete and it has been an overall pleasant experience.

**Most interviewees had never worked with, or under, a DBE prime contractor. (Interviewees #1, 4, 5, 6, 7, 8, 11, 12, 14, 16, 19, 21, 25, 26, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 57).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, was not of having worked with or under a DBE prime contractor.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, was not sure whether he had ever worked with or under a DBE prime contractor, but did work once on a project for a minority-owned firm. At that time, however, he believes that the minority-owned firm had graduated from the DBE Program. The prime contractor in that instance was the designer on a project for the City of San Diego and Interviewee #4 acted as its subcontractor.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he does not think that his company has ever worked with or under a DBE prime contractor but he was unsure. Typically, he stated, prime contractors are large corporations and not required to be DBEs.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has worked with a DBE prime contractor only once about 20 years ago. The DBE was a construction company. He stated that he could not recall the name of the project, but recalled that it was a redevelopment project someplace.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had not worked with too many DBEs but she is always willing to work on a good project and it does not matter whether they are a DBE.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he has never worked with or under a DBE prime contractor. He stated that he once had a deal in the works to work with or under a DBE prime contractor, but the negotiations did not work out after a Hispanic firm was proposed for the work instead. He stated that the outcome was frustrating, but he did not complain because he did not want to hurt his future business opportunities.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, did not believe that he had ever worked with or under a DBE prime contractor, but noted that he may have worked with such a firm and not know their certification status.

### B. SDCRAA anecdotes regarding public and private sector work

The following anecdotes regarding work in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

**Private sector work experience**

**Some interviewees reported success for minority- and female-owned firms in the private sector.** Interviewee #SD16, representing an African American male-owned firm, indicated that most of his firm's work comes from the private sector. Interviewee #SD20, representing an Asian American male-owned firm, and Interviewee #SD5, representing an African American male-owned firm, both also indicated that their firms are successful in the private sector.

Interviewee #SD20, representing an Asian American male-owned firm, said that bidding on public work requires a well developed system and a well established support staff to find projects and put together proposals. As a result, he said that private work might be is easier for MBE and WBE firms (that tend to be small) than public work.

**Some interviewees indicated that there is more flexibility and greater profit potential in the private sector.** Interviewee #SD24, representing a Caucasian male-owned firm, stated that the profit potential is much higher in the private sector than in the public sector: "Private work is more profitable because the rates are better. Public work requires more effort to win the work and the rates are not as good." He went on to say that bids are so low in the public sector in the current market that being profitable is even more difficult.

Interviewee #SD20, representing an Asian American male-owned firm, also said that profit potential is higher in the private sector but said that payment problems are also much more common compared to the public sector.

Interviewee #SD21, representing a Caucasian male-owned firm, indicated that profitability used to be better in the private sector, but that today the profitability of the private and public sectors is comparable. However, he pointed out that doing work in the private sector is riskier than doing work in the public sector, primarily because of non-payment issues.

Interviewee #SD17, representing a Caucasian female-owned firm, said that over 60 percent of her firm's business comes from the private sector. She said that although "public work is more consistent," private work tends to be more profitable.

Interviewee #SD42, representing a Caucasian male-owned firm, suggested that work in the private sector is more profitable than in the public sector, but he noted, "Profitability depends on the contract."

Interviewee #SD45, representing a Caucasian male-owned firm, indicated that profitability is higher in the private sector than in the public sector due to there being far fewer contract requirements in the private sector.

SDTA #7, representing a construction trade organization, reported that private sector work is easier than public sector work, because it tends to be less structured: "In general, there is more flexibility for contractors working in the private sector." He went on to say that the bureaucracy in the public sector makes it more difficult for firms to maneuver.

**Some interviewees said that MBE and WBE firms participate less in private sector work.** Interviewee #SD2, representing a Caucasian female-owned firm, reported that only 10 percent of her work comes from the private sector. Similarly, Interviewee #SD14, representing a Hispanic American male-owned firm, explained that only 20 percent of his business comes from the private sector. He went on to say that his firm prefers not to work in the private sector because of a number of barriers that MBE and WBE firms face, including: exclusion from the good ol' boy network, rampant bid shopping, and the private sector's disregard for MBE/WBE status.

Interviewee #SD47, representing an African American female-owned firm, said that MBE/WBE firms have a more difficult time succeeding in the private sector due to racism and stereotypical attitudes: " … the private arena is culturally based. We thought we didn't fit in from a race and gender perspective — we definitely don't fit in the private sector. You look at these large corporations, the big hotels that you see — they're not trying to see [MBE/WBE firms succeed]. If we don't have a tray in our hand, if we're not in a serving capacity, then we're invisible."

**Some interviewees reported that it is more difficult for minority- and female-owned firms to be successful in the private sector due to the non-existence of DBE goals.** Interviewee #SD21, representing a Caucasian male-owned firm, remarked that DBE status does not play a role in the private sector, making it more difficult for minority- and female-owned firms. When asked why that is the case, Interviewee #SD21 replied, "On the private side, it's all strictly low bid type stuff. It's dollar driven."

Interviewee #SD20, representing an Asian American male-owned firm, said that in the private sector low bids and personal connections play a much larger role in winning contracts than MBE/WBE status.

Interviewee #SD30, representing an African American male-owned firm, explained that his minority status does not help his firm get work in the private sector: "Private work really [comes down to] who [the prime contractors] know, and who has the best price." He went on to say, "My experience in the private [sector] is that they really just want the best bang for their buck. They just want a good product in the end."

Interviewee #SD32, representing an African American male-owned firm, indicated that DBE status does not play a role in contract awards in the private sector: "I've never seen a contract just because they were minority-owned or a DBE in the private sector.

**Public sector work experience**

**Several minority- and female-owned interviewees reported success in the public sector.** Interviewee #SD20, representing an Asian American male-owned firm, said that, compared to the private sector, finding out about projects is easier in the public sector and contract awards are fairer: "[The public sector process] is more open, more transparent. [Agencies] understand that because it's public money, they have to select a group of consultants or contractors that's qualified, based not solely on price. They put more emphasis on the qualifications of the team that does the work." Interviewee #SD20 went on to say that as a result of the current recession, most of his firm's work comes from the public sector.

Interviewee #SD28, representing a Caucasian female-owned firm, indicated that establishing relationships with prime contractors in the public sector is crucial to getting work in the future and allows small firms to be successful in the public sector: "Once you get that bond with [certain prime contractors] a lot of them don't even call around for [other bids]."

**A few interviewees reported that projects in the public sector tend to be more profitable than projects in the private sector.** Interviewee #SD19, representing a Caucasian male-owned firm, said that "public jobs are more profitable [than private sector jobs]." She went on to say that the one exception to that claim is if the private sector client is a large company.

Interviewee #SD31, representing a Caucasian male-owned firm, said that public sector projects with prevailing wages are more profitable than both other public sector projects and private sector projects (which are comparable in profitability). However, Interviewee #SD31 estimated that prevailing wages apply to only half of the public sector projects on which his firm works.

**A few interviewees reported that minority- and female-owned firms are not successful in the public sector.** Interviewee #SD21, representing a Caucasian male-owned firm, said that it is "very, very difficult" for MBE and WBE firms to remain competitive in the public sector because they tend to be smaller and less established than majority-owned firms. He went on to say that DBE certification does not help either, because DBE goals are no longer mandatory: "I don't think [DBE status] comes into play."

Interviewee #SD5, representing an African American male-owned firm, reported that although he used to have success in the public sector, he is yet to win a public sector contract since reopening his business in 2006.

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that his firm's public sector work is decreasing. A number of agencies have reduced the frequency with which they use his firms services (e.g., the Port Authority and the City of San Diego).

**Some interviewees indicated that public sector work is very competitive as a result of the current recession.** SDTA #7, representing a construction trade organization, indicated that there is increased competition in the public sector: "There was one bidders list the other day that had 43 bidders on it!" SDTA #7 went on to say that increased competition would affect small firms more than the larger firms, because they are "the weakest financially."

Consistent with those comments, Interviewee #SD11, representing a Caucasian male-owned firm, also indicated that public sector work has become quite competitive recently: "We are having 20 to 25 bidders on our work where we used to have seven. Work has slowed down as a result of the economic downturn."

Interviewee #SD28, representing a Caucasian female-owned firm, explained that the current recession has resulted in increased competition in his firm's sector: "Where it used to be [that] there were three main players [in the firm's industry], now there are five or six."

Interviewee #SD6, representing a Caucasian male-owned firm, indicated that the public sector is "extremely competitive." He explained that his firm was the second-lowest bidder on 13 projects in the past year, and in all cases their bids were less than one percent higher than that of the lowest bidder and they did not win any of those projects.

Interviewee #SD18, representing a Caucasian female-owned firm, said that the market is very competitive and that price is very important, particularly in the public sector: "Service does not tend to be a value added for this industry."

Interviewee #SD37, representing a Caucasian male-owned firm, reported that the current market has resulted in increased competition in his firm's industry. He noted that the residential market has slowed down and that the contractors who previously worked in the residential sector are now entering the commercial, industrial and government markets.

Interviewee #SD41, representing a Caucasian male-owned firm, explained that private sector opportunities have dried up dramatically and that firms that used to bid on private sector work are now bidding on public sector work, increasing the amount of competition in the public sector. He went on to say that many of those firms do not have experience bidding on public sector work and their bids are too low to be profitable: "People are bidding 10 to 15 percent below my costs … my bare minimum costs!"

Interviewee #SD38, representing a Hispanic male-owned firm, also reported that there is more competition in the current market. He described a recent bid that his firm submitted: "Competition is higher … We bid [a project at a local high school] … There were 21 general contractors [bidding]."

Interviewee #SD43, representing a Hispanic male-owned firm, reported that the current recession has made it difficult for small firms, because there has been a steep increase in competition, which has in turn increased the probability of her firm being outbid. She went on to say that the increased competition means that firms have to exceed clients' expectations in order to compete for jobs with them in the future.

Interviewee #SD46, representing an African American male-owned firm, indicated that, due to the current economic conditions, his firm now competes for public sector work with a number of firms who previously only worked in the private sector. He said, "Times are tough right now — it's the economy."

**A few interviewees cited complex bid procedures as a barrier to doing work in the public sector.** Interviewee #SD3, representing a Caucasian male-owned firm, said that the bidding process for public agencies takes some sophistication. Interviewee #SD21, representing a Caucasian male-owned firm, commented that the bidding procedures in the public sector "… could be a barrier to an inexperienced entity. They're complex and … difficult."

Interviewee #SD28, representing a Caucasian female-owned firm, said that the primary difference between the private and public sectors is that working in the public sector requires firms to follow more stringent guidelines and restrictions. She remarked, "You have to jump through some different hoops [in public sector]."

Interviewee #SD31, representing a Caucasian male-owned firm, stated that the biggest differences between working in the private sector and working in the public sector are that in the private sector firms do not have to deal with bonding nor do they have to deal with "idiotic RFPs." Regarding contracts and RFPs, he said, "I find that many of these things are written by lawyers who don't know electricity from wind, and they put such stupid things in the contracts … they've got informed attorneys sticking their nose where it doesn't belong."

Interviewee #SD32, representing an African American male-owned firm, reported that dealing with the contract specifications of government projects can be difficult for new firms: "I would think it's really difficult for a new emerging … company to come in and meet the requirements that the government sets forth. Typically, you get a contract and you get a book that's 4 inches thick full of specifications." Comparing public sector work to private sector work, Interviewee #SD32 said that there are "a lot more hoops to jump through" in the public sector.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that contract specifications in the public sector can be "difficult to deal with."

Interviewee #SD44, representing a Hispanic male-owned firm, stated that his firm rarely sells products to public agencies — he said that 99 percent of his firm's business comes from the private sector. He indicated that doing public agency work requires more personnel and a well-established system: "It's just a different animal [working with public agencies]. We're not set up to do that right now. … We don't have the manpower to do it."

Interviewee #SD45, representing a Caucasian male-owned firm, stated that there is a great deal of subjectivity in how public sector staff interprets contract specifications and regulations. Interviewee #SD45 described an experience he had working with Caltrans: "When they took all their requirements and punched them all down here in District 11, we had people that interpreted the rules by their own means. It's almost a fiefdom — like a third world country down here. You have a Green Card running the engineering for minor B-contracts. The one underneath him is a Green Card from the Philippines. The guys who are emptying the trash cans are the certified Caltrans engineers who can build bridges. It's so upside down." He went on to say that "…regulations are written for somebody in the industry who understands them. It's not for … idle interpretation."

Interviewee #SD46, representing an African American male-owned firm, reported that firms have to meet more requirements to win public sector work compared to private sector work: "The public sector requires more qualifications than the private sector. You have to be licensed, insured and bonded. In the private sector sometimes those are not a requirement."

Interviewee #SD47, representing an African American female-owned firm, said that the relationship that a firm has with a contracting officer goes a long way in determining the firm's success with the public agency. She said that much of the bid process in the public sector is subjective and a lot of it is dependant on how the contracting officer feels about a particular firm: "[Contracting officers] can change your life, change your business — help propel it to be successful, cause it not to be successful. They have so much power and authority. If they are of poor character in any capacity — if they are racist, or bigoted, or anything, they can dictate where your business is going to go, and I think that's unfair."

**Some interviewees cited extensive paperwork as a barrier to doing work in the public sector but others cited it as a feature.** Interviewee #SD11, representing a Caucasian male-owned firm, indicated that extensive paperwork in the public sector impedes success: "The biggest barrier for bidding public works is the huge amount of paperwork that public agencies require … A few of my friends have companies but they won't do public work because of the paperwork …"

Interviewee #SD41, representing a Caucasian male-owned firm, said, "Public projects are more paper heavy. You have to submit cut sheets on everything and anything — lots of checks and balances. The public has its own specifications for each job. You have to read the specs in their entirety. That could mean 250 to 1,000 pages. There is a lot of up front work." He continued, "Bidding on the public [sector], it separates the men from the boys …"

In contrast, Interviewee #SD16, representing an African American male-owned firm, said that the extensive paperwork is an advantage to working in the public sector: "I really like the paper work game with the public work. It eliminates the possibility of doing something wrong. Everything is documented."

Interviewee #SD37, representing a Caucasian male-owned firm, said that public sector projects are described in much more detail than private sector projects, making it easier to complete the work: "Larger public jobs usually have a more complete set of plans or engineered drawings, so you know exactly what you're going to build when you bid on it. Private jobs rarely have drawings and it will just be a verbal scope of work. The private [sector] will provide us with specifications along the way, but we figure out how we're going to build it."

Interviewee #SD40, representing a Caucasian male-owned firm, reported that public sector work is generally more difficult than private sector work: "Public projects have more politics and you have to be patient — there is a broader audience to please and things don't go as fast as you would like. He went on to say that there is also less flexibility in the public sector than in the private sector.

Interviewee #SD46, representing an African American male-owned firm, reported that there is a great deal of paperwork involved with public sector work, and that it can be difficult for firms to learn: "You learn the paperwork while you're doing the job. There's no training for what you haven't done paper wise." He continued, "Paperwork can be a problem. The general cannot get paid until the sub's paperwork is together. The sub doesn't want to do the paper work because they're bombarded." Interviewee #SD46 indicated that his firm often does paperwork on behalf of subcontractors.

Interviewee #SD47, representing an African American female-owned firm, said that, compared to private sector work, there is much more paperwork associated with public sector work. She said, "[In the private sector] you do a job walk, you give them a quote, they give you a contract, you do the

work, you bill, and you get paid. The public sector is paperwork and huge contract. There's always some kind of code, FAR regulations with the feds …."

**DBEs as prime contractors**

**A few MBE firms indicated that they often work as prime contractors.** Interviewee #SD14, representing a Hispanic American male-owned firm, reported that approximately half of his work comes as a prime contractor. Similarly, Interviewee #SD20, representing an Asian American male-owned firm said that over half of his work comes as a prime contractor.

Interviewee #SD5, representing an African American male-owned firm, said that he prefers to work as a prime contractor, because it allows him to control his own money, deal directly with agencies and owners, and be the first to get paid. Of his work as a prime contractor, Interview #SD5 remarked, "[Working as a prime contractor is] more responsibility but better circumstances for me."

**Several interviewees were able to name successful minority and female-owned firms that work as prime contractors.** Interviewee #SD21, representing a Caucasian male-owned firm, indicated that there are a number of minority-owned firms working as prime contractors in the San Diego area: "There are numerous highly qualified, motivated, and financially able black and Latino contractors in Southern California." Interviewee #SD21 went on to specifically name a female-owned firm with which his firm has worked in the past. Interviewee #SD43, representing a Hispanic male-owned firm, said that her firm works almost exclusively as a prime contractor.

Interviewee #SD14, representing a Hispanic American male-owned firm, said that he has worked with MBE/WBE prime contractors and has had good experiences with them. Interviewee #SD26, representing a Caucasian male-owned firm, named a Subcontinent Asian American-owned firm that he described as "one of the best project managers I have ever worked with."

SDTA #6, representing an Asian American trade association, reported having at least a few members that work as prime contractors and specifically named a minority-owned engineering firm. Similarly, SDTA #4, representing a local chamber of commerce, was able to name a successful minority-owned construction firm that works as a prime contractor in the San Diego area.

Interviewee #SD28, representing a Caucasian female-owned firm, said that her firm has worked with a few MBE/WBE prime contractors. She went on to say that working with those contractors is not any different from working with non-DBE prime contractors. She reported that the only difference is that MBE/WBE prime contractors tend to be more understanding of her firm's position as a WBE firm: "I think [MBE/WBE prime contractors] understand a little more about what we're going through [as a DBE firm]."

**Other interviewees had trouble naming minority- and female-owned prime contractors.** When asked if he has worked with other minority- or female-owned prime contractors, Interviewee #SD14, representing a Hispanic American male-owned firm, said, "not a whole lot." Similarly, Interviewee #SD20, representing an Asian American male-owned firm, could not think of any examples of minority- or female-owned prime contractors with which his firm had worked, and he said that he was confident that his firm had never worked with a minority- or female-owned prime contractor on a large project.

Interviewee #SD2, representing a Caucasian female-owned firm said that her firm "rarely" works as a prime contractor.

Interviewee #SD30, representing an African American male-owned firm, indicated that there are only a small number of minority- and woman-owned firms in the San Diego area: "There's not really a lot [of MBE/WBE firms] in San Diego … I'm sure that has a lot to do with the small percentages [of minorities in San Diego]." He went on to say that he has never worked with an MBE/WBE prime contractor.

Interviewee #SD43, representing a Hispanic male-owned firm, reported that she could not think of any successful MBE/WBE prime contractors in the construction industry besides her own.

SDTA #1, representing a local chamber of commerce, indicated that he could not think of a single successful minority- or female-owned firm that worked as a prime contractor in the San Diego area.

**One interviewee indicated that firm size is a barrier to minority- and female-owned firms working as prime contractors.** SDTA #1, representing a local chamber of commerce, expressed his belief that most minority- and female-owned firms are too small to be successful as prime contractors: "My bias is that [minority- and female-owned firms] are generally not [large enough]."

### C. Caltrans anecdotes regarding public and private sector work

The following anecdotes regarding work in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**DBEs as prime contractors**

**A majority of the minority or female-owned businesses work primarily as subcontractors.** These businesses offered a variety of reasons for working primarily as subcontractors, including that they were too small to bid as primes, that they preferred to work as subcontractors, and that they could not afford the capital expenditures required to be a prime contractor.

**Many interviewees only knew of a few DBE primes working in the public sector and few could recall ever having worked with a DBE prime.** Interviewee #CT17, a white male-owned business, stated there are "very few" DBE contractors doing public sector work, explaining "[u]sually DBE contractors are small firms, one to ten people. They're not capable of doing large jobs like [those for] Caltrans." Interviewee #CT66, a white male-owned business, said that he "know[s] a few" DBE firms working as prime contractors for Caltrans and that they hauled rock, sand, and pavement. Interviewee #CT33, a Hispanic female-owned business, stated that she did not monitor whether any prime contractors working for Caltrans are DBE firms, but her observation was that "most of [her] primes are not DBEs or any BEs at all." Interviewee #CT34, a white male-owned business, was not aware of and/or could not think of any DBE firms that worked for Caltrans as prime contractors. CATA #1, an Asian American trade association, said there are "some" but "very very few" DBE firms working as prime contractors on Caltrans jobs. This happens only when there is a "major push" in the community and then one or two DBE firms get a small contract as a prime. Similarly, CATA #7, a Filipino trade association, sees very few DBE primes.

Interviewee #CT30, an Asian American male-owned firm, observed that if a DBE is able to obtain prime work, it is probably getting bigger and bigger, and eventually the DBE grows out of the program. He knows of a few firms that have successfully graduated, but have had difficulty in maintaining non-DBE status, partly because they got their work due to their DBE status. Once they graduate out, "they're playing with the big boys and nobody wants to pick them anymore," not because they do not do good work, but because they are not DBE to fulfill the goal. Interviewee #CT30's main core work does not depend on DBE status.

**Some DBEs reported working primarily as subcontractors due to financial limitations.** Interviewee #CT81, a Hispanic male-owned business, believes there is a lack of opportunity for small firms in both sectors. The average price range of his contracts in the public sector is $250,000.00. This DBE works primarily as a subcontractor in both sectors because he cannot afford to bond his work.

Interviewee #CT29, a Hispanic male-owned business, tried to do more prime work by forming a limited liability corporation in 2001. He hired people, paid the workmen's compensation, and made sure that he satisfied all the requirements to avoid having the answer that they like him "but [he does not] have this or that." This DBE describes his experience as: "it was expensive and I've never gotten anywhere."

**Some minority-owned businesses did not believe there were opportunities for small businesses to act as primes in the public sector.** Interviewee #CT33, a Hispanic female-owned business, stated that the company works most of the time (about 60 percent) as a subcontractor in the public sector and that on Caltrans jobs it works primarily as a subcontractor to engineers. According to Interviewee #CT33, the company works as a sub on these jobs because, "Caltrans is very engineering-oriented and generally the engineers like to be in charge," and "everything flows from the engineering contract."

Interviewee #CT8, a Hispanic male-owned business, felt that his business had been successful in getting work in the public sector, including work for Caltrans, but works 80 percent of the time as a subcontractor – "it just seems that we get more work as a subcontractor than as a prime contractor."

CATA #3, a Hispanic trade association, stated its members work mostly as subcontractors and he had not seen any Hispanic-owned firms working as prime contractors for Caltrans, at least not in the professional services area. According to CATA #3, few members go after Caltrans work because most members feel that Caltrans' doors are not open and do not believe that work opportunities with Caltrans are anywhere close to what they should be. CATA #3 said that he knew of a couple of non-Hispanic DBE firms doing prime contractor work for Caltrans (a female-owned business that does striping work and business owned by a representative of the Small Business Council).

**Some DBEs reported that they act as subcontractors because Caltrans or other agencies do not directly contract for their type of work.** Interviewee #CT46, an Asian American male-owned business, works as a subcontractor for Caltrans. His company performs lighting for roadways, fences, and guardrails for Caltrans. Unlike schools that use construction managers to break down their contracts by category of work, Caltrans hires a general contractor for its projects and relies on them to break the work up and subcontract out the smaller jobs.

Similarly, Interviewee #CT51, a Hispanic male-owned business, said that the company works mostly as a subcontractor in the public sector and on Caltrans projects because of the nature of the work it performs. Caltrans does not award waterworks contracts directly but instead lets the prime contractors subcontract out this work. Along the same lines, Interviewee #CT31, an African American female-owned business, stated that the type of work the company does in the public and private sectors is "exactly the same," but the company is primarily a prime contractor in the private sector and a subcontractor in the public sector because agencies do not directly contract for utility work.

Interviewee #CT39, a Hispanic male-owned firm, stated that the company always works as a subcontractor on all of its work because of the nature of the business – the prime contractor buys the steel and other materials and then calls the company to install the steel reinforcement.

**Some DBEs report success working as prime contractors in the public sector.** Interviewee #CT1, a Native American male-owned business, has done some work as prime contractor for Caltrans; these projects are fairly small and are local. For example, Interviewee #CT1 did water testing at a rest area near his laboratory. This contract came through a local Caltrans office. CATA #2, an African American trade association, said there were "quite a few" DBE firms working as prime contractors on Caltrans jobs before the passage of Proposition 209, but they are all out of business now. He said that he knew of only one DBE currently doing prime work for Caltrans, listing an equipment rental company owned by an African American male.

Interviewee #CT10, an African American male-owned firm, works primarily as a subcontractor in both the private and public sectors, because that is how the business is licensed. The company sometime works as a general contractor in the public sector and has worked as a general contractor for Caltrans. He notes, that in the public sector, he is required to pay his workers more than in the private sector due to prevailing wage requirements. Interviewee #CT9, a white male-owned business, stated that there were "some" DBE primes.

**Some DBEs report success working as prime contractors in the private sector.** Interviewee #CT33, a Hispanic female-owned business, who acts as a prime 80 percent of the time, felt that the company had been successful in getting private sector work, but she noted that private sector work was slower now because a slump in the building and housing market. Interviewee #CT44, a Middle Eastern male-owned firm, reported success in the private sector working primarily as a prime contractor on contracts ranging from $300,000.00 to 700,000.00.

The representative of CATA #2, an African American trade association, stated that his company works mostly as a prime contractor in the public sector, where he felt that it had been "fairly successful." He said that his company only bids jobs where it can make money and thus does not get as many jobs as his competitors who bid public sector jobs "just to keep the trucks running."

Interviewee #CT49, an African American male-owned firm, stated that he used to do work in the private sector, but that he had shifted entirely to the public sector "a while ago," and now does all of his work there. Interviewee #CT49 felt that he had been successful in getting work in the public sector and that his company works mostly as a prime contractor there, with the contracts for its jobs going up to $3 million. He said that he knew of some DBE firms working as prime contractors on Caltrans projects but that they were not local firms.

**Some interviewees stated that working as a subcontractor allows a firm to avoid bonding and other requirements.** CATA #11, a minority trade association, has only one member out of sixty, an engineering contractor, who works as a prime on Caltrans projects. Rather, most of his members act as subcontractors in the public sector. According to CATA #11, it is easier in a sense to be a subcontractor since "you don't have to get a bond … you don't have to go through the bidding requirements, getting a lot of sub-quotes, … all you do is find your scope of work and give your bid to the general contractor."

Interviewee #CT76, a white male-owned business, will not bid Caltrans projects as a prime because of all the requirements, in particular the bonding and DBE requirements.

CATA #11, a minority trade association, indicated that most of his members act as subcontractors in the public sector because "you don't have to get a bond … you don't have to go through the bidding requirements (getting a lot of subcontractor-quotes) … all you do is find your scope of work and give your bid to the general contractor."

**Anecdotes of DBEs regarding private sector work opportunities**

**Most minority and female-owned firms interviewed reported success in the private sector.** Interviewee #CT51, a Hispanic male-owned firm, has been successful in getting work in the private sector, where it works mostly as a subcontractor to either prime contractor or a builder-developer. He has chosen to focus on private work for the past three to four years, but said it is difficult for his company to compete against non-union firms in the private sector where there is no prevailing wage requirement.

Interviewee #CT7, a white female-owned surveying company, works primarily as a prime contractor in the private sector. She said that private sector projects are generally broken into smaller jobs. Interviewee #CT13, a Pakistani male-owned firm, characterized his attempts to get work in the private sector as "pretty successful."

**Some minority and female-owned firms reported greater success in the private sector because there is less competition, more profit, greater accessibility, and less bureaucracy.** Interviewee #CT67, a white female-owned firm, said that the company works as a prime contractor in both the private and public sectors and that its pricing is done on a set schedule based on quantity. She said that the "private sector is much easier to deal with . . . ." and felt that the company had been very successful in getting work there.

CATA #2, an African American trade association, has been "very successful" in the private sector, which he found to be more accessible than the public sector because there is no bidding involved and the company need only demonstrate the quality of its product and services. He stated that the company's "contracts" in the private sector are actually purchase orders and that the company sells fuel on a quantity basis (by the gallon). CATA #7, a Filipino trade association, stated its members are successful in the private sector. The "experience" criteria in the public sector close the members out of a lot of the public sector opportunities. It is often easier to get work in the private sector and negotiate a fee. And the fees are generally higher in the private sector.

CATA #3, a Hispanic trade association, said that he had been "pretty successful" in his attempts to get work in the private sector, and that the Association's members had also done "pretty well" in the

private sector. According to CATA #3, a lot of the members preferred private work to, or simply did not try for, public sector work because government work involves bureaucracy and certifications.

**Some minority and female-owned companies reported difficulty obtaining work in the private sector.** Interviewee #CT84, an African American male-owned business, went into business as a fuel supplier "because he saw this advantage" in the DBE program. He stated that small fuel suppliers cannot compete in the public sector or the private sector without the government "giving you the opportunity." He has received only one public sector contract and no private sector contracts in the last two years. Due to the suspension of the DBE goals, he is going bankrupt. Interviewee #CT31, an African American female-owned firm, described the private sector as "tough," particularly in San Diego, and noted that the majority of the firms in their sub-industry were "fairly conservative."

Interviewee #CT32, an Asian American female-owned business, felt that the company had been largely unsuccessful in its attempts to get work in the private sector, and she attributed this lack of success to developers and other companies using firms with whom they had been working for a long time and having "no incentive . . . to switch."

**Anecdotes of DBEs regarding public sector work opportunities.**

**DBE interviewees reported a variety of obstacles to pursuing work in the public sector, including contract size, payment delays, bonding/insurance issues, prevailing wage requirements, and bureaucracy.** CATA #11, a minority trade association, believes its members are less successful in the public sector due to the rules and regulations, including certified payroll and bonding and insurance requirements.

Interviewee #CT73, a white male-owned firm, stated that the turn-around time for payment in the public sector is worse than the private sector. In addition, there is a lot of "red tape" in the public sector and the administrative time involved for any one project is four times longer than in the private sector.

**Some interviewees reported greater success in the public sector for various reasons.** Interviewee #CT11, a Native American male-owned firm, is more comfortable with the "structure" of the bidding process in the public sector than the "relationship" basis for private projects. For this reason, it does not engage in much private sector work. The company's private sector work is usually on large projects of mostly over $100 million in value. The company's public sector work ranges from about $50-$70 million in value for prime contracts, and when the company has acted as subconsultants the projects are usually in the billions. Interviewee #CT39, a Hispanic male-owned firm, works almost exclusively in the public sector due to the nature of its work – "[v]ery few people are building their own bridge."

**Some interviewees stated that projects are generally larger or more profitable in the public sector.** CATA #7, a Filipino trade association, believes contracts in the public sector are larger due to the nature of the work. CATA #3, a Hispanic trade association, reported that government work can be more lucrative than private sector work, but the former requires a "lot more effort."

Interviewee #CT40, white male-owned firm, stated that due to the open bid system its ability to get public sector work depends if it can cut its price low enough. He reported that public sector work is more "cut and dry" than the private sector – especially with regard to payment.

**Some interviewees reported payment issues in the public sector.** Interviewee #CT44, a Middle Eastern male-owned firm, stated that his only complaint about working in the public sector is the turnover time for payments. It causes a cash flow problem for his business.

**Some interviewees reported difficultly obtaining work in the public sector due to the good ol' boy network.** A small consulting firm, (presumably a minority owned company), stated: "Most of the time it is not worth bidding A/E work as sub because the primes have their own staff [and] show you on the proposal but when they are awarded the job they don't respond to the subs. It's almost better to be a prime if you are a minority based company." (Written testimony submitted 3/16/07)

### D. Telephone interview anecdotes regarding public and private sector work

The following anecdotes regarding experiences with public and private sector work were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**Some telephone interview respondents reported that certain industry regulations make it difficult to work in the public sector.** Respondents indicated that there a number of restrictions that have to be taken into account when bidding on public sector work. For example, a majority-owned firm said that new firms should consider public sector regulations before entering the transportation industry: "I think it would be extremely hard for someone to start a company like ours today because of all the restrictions [in the public sector]."

**Several telephone interview respondents reported that there is a great deal of competition in the public sector.** Both MBE/WBE firms and majority-owned firms indicated that increased competition in the public sector has made it difficult to be successful. For example, a majority-owned firm reported that his firm no longer bids on public sector projects because of the competition: "It is increasingly difficult to bid and win projects with any local agency. Economic realities have increased competition — especially from larger firms — to the point that I cannot compete for these projects anymore."

## III. DBE Utilization

### A. Consortium anecdotes regarding DBE utilization

<u>Reported utilization of DBEs by prime contractors in the public and private sectors</u>

**Some prime contractors reported using the same subcontractors in the private and public sectors. (Interviewees #3, 5, 8, 14, 16, 18, 19, 20, 21, 22, 24, 26, 33, 34, 35, 36, 38, 41, 42, 46, 48, 49, 53, 54, 55, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, reported that he uses the same subcontractors in the private sector and in the public sector because there are a limited number of them and once you develop a relationship with them, if you are happy with them, you continue to use them. He stated that competency was never an issue for the DBEs that he used.

Interviewee #3 recalled using DBEs on private sector projects, most recently, in 2007. The project was an investigation to determine the amount of contamination at a site. He stated that he used a DBE analytical firm. Interviewee #3 stated that he has used DBEs on private sector projects tens of times. Typically the DBEs would always be analytical firms or drillers and they would be located all

over Southern California. He recalled a project in which he used a demolition contractor who was a DBE. Interviewee #3 stated that the demolition contractor was a "sham" DBE. The demolition contractor represented that it was woman-owned but was in fact operated by a Caucasian male. Interviewee #3 stated that he generally finds DBEs by recommendation of colleagues. Occasionally he also finds DBEs through the agencies. Often when the Consortium puts the project out for bid, the agency will attach a list of qualified DBEs. Interviewee #3 stated that the typical cost of the project in the private sector that he used DBEs on was $50,000 - $100,000, and the DBE portion might be $10,000 to $30,000. Public sector jobs are more extensive, $4 million to $6 million. Private sector jobs tend to be small with certain exceptions like refinery sites. Interviewee #3 stated in the private sector the client also wants to spend less money, so they want you to take less samples, how many holes you put in the ground, how much analytical work you do.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that when his company was a prime contractor, the company would sometimes have to hire a structural engineer to provide structural calculations. Interviewee #5 stated that his company used the same sub-consultants in the private sector as in the public sector. Interviewee #5 stated that he thinks the structural engineer was a DBE but was unsure. He stated that the structural engineer is Asian and would likely qualify as a DBE. Interviewee #5 stated that he has used the structural engineer in public and private jobs.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, uses the same subcontractors in the private sector as in the public sector. Interviewee #16 stated the reason is because of his subcontractors' knowledge, experience, and reliability. Interviewee #16 also noted the competitive pricing of his subcontractors as a reason for using them in both the public and private sectors.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, does use the same subcontractors in both the private and public sector, but she's not very likely to use subcontractors in the private sector; the majority of her private work is with small non-profit organizations

Interviewee #19, an MBE-certified African American male attorney, reported that he utilizes the same subcontractors in the private sector and the public sector. He stated that he tries to ensure that all of his subcontractors are minority or female-owned. He stated that many of his subcontractors are DBEs. He stated that he locates DBEs by word of mouth or he already knows them. Interviewee #19 stated that he always tries to utilize DBEs after soliciting them depending on the need.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she does use the same subcontractors in the public and private sectors; she stated that good work and good relationships dictate that decision.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, uses the same subcontractors in the public and private sectors. She stated that she is small business friendly and she will work with firms that are open to sharing information. She stated that these subcontractors are minority- or female-owned but did not know whether they were DBE-certified. She stated that she has attempted to utilize minority- and female-owned subcontractors in the private sector. She stated that she has also utilized DBEs on Consortium projects. She stated there is an advantage to using small businesses because they are flexible and do

not have as many layers as larger companies. She stated that she locates DBEs via word of mouth and uses them "all the time" after soliciting business. She said the average price of the subcontracts to DBEs is between $10,000 and $100,000.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that for the most part she utilizes the same subcontractors in the public and private sectors. She stated that she utilizes the same subcontractors because their relationships, experience, staffing, resources and qualifications have been established and thoroughly vetted. She said that some of her subcontractors are female-owned and some are DBEs; she stated that always attempts to use minority- and female-owned and DBE subcontractors in the private sector. Interviewee #22 stated that she feels it is important to work with DBEs because her firm is a DBE; she locates DBEs through Caltrans, MTA and OCTA. She stated that she utilizes DBEs as often as she can after they reach an agreement as to terms. Interviewee #22 reported that she typically subcontracts CAD work and the average price of subcontracts she lets is $50,000.00.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, reported that she utilizes the same subcontractors across the public and private sectors based on relationships and known qualifications. She stated that some of these subcontractors are female- and minority-owned. She stated that she has tried to use female/minority/DBE subcontractors in the private sector and on Consortium projects; she said that it is required but not mandatory. She stated that she locates DBEs using the list provided by L.A. County MTA and she often utilizes DBEs after soliciting them.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she does use the same subcontractors in the private sector as in the public sector. She stated that she bases her selection of subcontractors on their qualifications. She said that some of these subcontractors could have been minority- or female-owned, but, again, the decision to use them is based on qualifications. She said she has used DBE subcontractors, especially when required to do so by the agency. However, she has not attempted to use minority/female/or DBE subcontractors in the private sector. She stated that on Consortium projects, she solicits price quotes from DBEs about once a year because it is required under an RFP. She stated that she locates DBEs by word of mouth and always uses them after soliciting a price quote; said the price range of these projects is between $20,000 and $800,000.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported using the same subcontractors in the public and private sectors and stated that experience is the overriding factor in determining which subcontractors to utilize. She stated that these subcontractors are minority- or female-owned and more often than not she utilizes minority- or female-owned firms with whom she has a relationship. She does not know whether these subcontractors are DBE-certified because she focuses on the firm's qualifications. She has attempted to utilize minority/female/DBE-subcontractors in the private sector but she has not had any assignments in the private sector. She stated that she utilizes DBEs in public sector work 100 percent of the time after soliciting them; she noted that she does not necessarily utilize DBEs because they are certified but rather because they are in her "network of people" that she uses based on the quality of their work. She stated that she has become familiar with certain DBEs through teams on former jobs. When she is seeking a subcontractor to work on a particular specialty area she will draw from her network. The average price range of her projects to DBEs is between $60,000 and $1,000,000.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that when the opportunity presents itself she uses the same subcontractors in the private and public sectors. She indicated that if they deliver quality service she will utilize them again. She stated that she always attempts to utilize minorities in the private sector. She stated that she locates DBEs through organizations and other referrals. She utilizes DBEs 100 percent of the time after soliciting them.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she uses the same subcontractors in the public and private sectors because she was confident in their work and knew how they worked. She stated that some of these subcontractors are female- or minority-owned. She does not always know until the start of the project whether her subcontractors are DBEs; she is more concerned with the quality of the work. She stated she would always try to utilize female- and minority-owned subcontractors in the private sector but the quality of the work is her priority. She said that she keeps a roster of good people and tries to update it based on recommendations. She stated that she locates DBEs by sending out letters to court reporters (her business) who have just passed the exam. The average contract amount to "subcontractors" is $200 to $2,000.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported using the same subcontractors across the private and public sectors because they are excellent at what they do. He reported utilizing minority- and female-owned and DBE-certified subcontractors. He stated that he solicits DBEs for price quotes 100 percent of the time; he solicits them because they are good at what they do and they are familiar with the reporting processes of the industry. He stated that he locates DBEs through experience working with other businesses and through recommendations; he also advertises. He also stated that he locates them through an organization of which he is a member: National Center for American Indian Enterprise Development (NCAIED). He stated that he utilizes the firms that he solicits pretty often depending on the quality of work. Interviewee #38 stated that the average price range of subcontracts is $100,000.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, reported using the same subcontractors in the public and private sectors because it is easier – they know the quality of work and it is easier to explain the vision for a project because of the working relationship they have maintained. They may have worked with a minority-owned firm but not a female-owned firm; he was not sure whether any of his subcontractors were DBEs although they have tried to work with DBEs in the private sector past. However, they do not target DBE firms.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, reported that she utilizes the same subcontractors in the private and public sectors because of the relationships that have developed and the knowledge and understanding that they have of the services provided and the related expectations. She stated that the quality of work is better. Interviewee #42 stated that she does use minority- and female-owned subcontractors, but she did not know whether they were certified DBEs. She stated that in both the private and public sectors she utilizes the vendors that she knows; whether they are minority- or female-owned is a secondary consideration. She does not look for DBEs in particular. The average price of her subcontracts is about $5,000.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he tries to utilize the same subcontractors in the private and public sectors because of the quality of their work, their history, and their dependability. He stated that all of his subcontractors are female- or minority-owned but he did not know whether they were certified DBEs. He stated that he has not necessarily tried to use DBEs in the private sector because it is not required. He stated that he builds his workforce based on capabilities and skills and work history and not on a subcontractor's DBE certification — if they happen to be a DBE so be it.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated he very rarely utilizes subcontractors but noted that he does utilize the same subcontractors across all sectors. He stated that he has utilized a female-owned firm before but did not know if he had ever utilized a DBE-certified firm.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported using the same subcontractors in the private sector as well as the public sector because he is confident in the quality of their work and the services they provide. He stated that none of his subcontractors are DBE-certified although they are minority- or female-owned. He stated that his success on contracts has nothing to with whether he utilizes DBEs; he stated that he looks for experienced subcontractors and a lot of times DBEs are lacking in experience.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, stated that he most likely uses the same subcontractors across the public and private sectors due to the quality of their work. He stated that he utilized a female-owned firm and may have utilized a DBE. He stated that he only uses firms with whom he is familiar with their work history and would not seek out a minority- or female-owned firm or a DBE unless they happened to fall into his category of quality subcontractors.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they make a point to use the same subcontractors in the public and private sectors because of the quality of work and services they provide. He stated that some of these subcontractors are minority- or female-owned or DBEs. He stated that they solicit DBEs all the time based on the quality of their work. He indicated that they locate DBEs through the Community Service Department which maintains a database of DBE subcontractors. He stated that the subcontracting work is for document control, scheduling, and estimating, and the price range for the subcontracts is about $10 million.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that they use the same contractors who they are familiar with and enjoy good relationships. He stated their primary concern is the quality of work. He reported that some of their subcontractors are minority- and female-owned. He was not aware of his firm specifically pursuing DBEs in the private sector but believes that this is the case. He stated that they do solicit DBEs for price quotes often and they locate DBEs through an online certification vehicle. He reported that the price range for projects subcontracted to DBEs ranges between $100,000.00 to $5,000,000.00. He stated that since the passage of Proposition 209, if the contract does not have a goal, they will select a subcontractor based on work history and a firm's ability to handle all aspects of the job.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, reported that his firm utilizes the same subcontractors across the public and private sectors. He stated that the subcontractors' disciplines, quality of work, skill set, and past relationships that have been built all contribute to this. He stated that they utilize DBE firms and have attempted to utilize DBE, and minority- and female-owned firms in the private sector. He stated that when they do utilize DBEs it is usually one that they know or that has been referred to them; in some instances they have obtained a list of approved DBEs. He stated that typically when they use a DBE, they do so because it is a requirement and will use them on additional projects as required.

**Some prime contractors reported using different subcontractors in the private and public sectors for various reasons. (Interviewees #9, 11, 15, 30, 37, 39, 43, 57).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he does not use the same subcontractors in the public and private sectors because every project is different and "there are a lot of alternatives out there." Interviewee #9 stated that he has used a DBE subcontractor both in the public and private sectors. He stated that he has not had any problems using DBEs on Consortium projects or on private sector projects.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she does not use the same subcontractors in the private sector and the public sector because the Consortium has very specific requirements for the subcontractors that she may use.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported that in the private sector, his company generally functions as a subcontractor, and he notices that prime contractors generally use many of the same subcontractors. Interviewee #15 rarely uses DBEs on private sector projects, but he reported that is largely an issue of pricing.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he does not use the same subcontractors in the public and private sectors because of the different expertise required for different projects.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he does not use the same subcontractors in the private sector and public sector. He stated that his usage of subcontractors is dependent on the discipline and the scope of work. For instance, in the high design sector he generally works with big name firms. He stated that some of the subcontractors are DBEs, but he does not always use DBEs. Though DBE usage is a priority, he stated, that his main focus is credibility, work history, and delivery.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that she does not always utilize the same subcontractors across the public and private sectors because sometimes it is not possible (e.g. for work that is abroad). She stated that she hires subcontractors on a case-by-case basis and she hires only the most qualified subcontractors that may or may not be minority- or female-owned. She stated that some of these subcontractors are DBE-certified but they are not hired on that premise; occasionally she finds out after the fact that a subcontractor is DBE-certified but it would be a coincidence because she does not make an extra effort to use DBEs. She stated that she has tried to utilize minority- and female-owned subcontractors in the private sector but again her main focus is the quality of work; she stated that she is more likely to go after quality

and credibility and if a DBE has those traits it is mere coincidence. She stated that the average price range for her subcontracts is approximately $250,000.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that they do not use the same subcontractors across the public and private sectors because their private sector subcontractors do not have the necessary public sector background. He stated that some of their subcontractors are minority- or female-owned, but he did not know whether they were DBE certified because they only pay attention to the prospective firm's work history and quality of work. He stated that their firm does not make any attempt to use minority- or female-owned firms or DBEs in the private sector because their firm evaluation is based solely on the quality of work.

**Some prime contractors reported having no need for subcontractors on the private sector contracts. (Interviewees #12, 13, 17, 52).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that they do not use subcontractors in the private sector.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that his work is very different as between the public and private sectors; he currently has one project in the private sector and he is acting as a subcontractor. Interviewee #13 stated that he has used a DBE on a Consortium project and it was no different from a non-DBE; he stated that he selected them because he thought they could do the work and not because they were a DBE.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated her company hasn't had the need to subcontract in the private sector.

**Most contractors reported having had a positive experience working with DBEs. (Interviewees #3, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 26, 30, 33, 34, 35, 36, 37, 38, 42, 46, 48, 49, 54, 55, 57, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, reported that his experiences working with DBE have always been fine.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that in his experience, DBEs are very good at assisting during the proposal stage, which he surmised is because DBEs "get used to getting calls at the last minute." He stated that after the proposal stage, there is no "notable difference" between working with DBEs and non-DBEs.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has not used a DBE subcontractor on a Consortium project. He has used a DBE subcontractor on a non-Consortium public sector project and that experience has been very good. Interviewee #12 stated that typically the DBEs that they look at are based on the ability to deliver; they do not like to just "go out and check in the yellow pages" to select a DBE because "you do not know what you are going to get" and it could put the project at risk.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had a positive experience working with a DBE on a Consortium project.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has had "a lot of positive" experiences working with DBEs and MWBEs. He stated that his company chooses to work with qualified subcontractors; he stated that they look for firms that are qualified first, and then consider whether they are a DBE.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that his experience using DBEs on Consortium projects has been fine. He stated that his experiences are generally positive with DBEs, and that if there is a problem, he will go directly to the owner and get the problem resolved.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has not utilized DBEs on Consortium or private sector projects when functioning in a prime contractor capacity. Interviewee #17's other experiences with DBEs has been very positive, but she noted that the experience depends largely on any business' philosophy.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated her experiences with DBEs on Consortium projects has been positive because she only works with people that she knows will give her a good product – she's too small. Interviewee #18 once had problems with a DBE business partner, and that led her to not work with the DBE again. Interviewee #18 does not have to work with DBEs, so she works with people that she needs to complete a given job.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has worked with many DBE subcontractors and stated that her network consists mainly of minority- and female-owned firms. She stated that if she receives a call to refer a group for a project, she tends to refer people within her own network. Interviewee #20 stated that she utilizes DBEs because it is good for business. She stated that after being in business for 15 years, she just knows who the DBEs are and she utilizes them all the time.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she has had a positive experience working with DBEs.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has had a positive experience working with DBEs. She stated that she rarely solicits DBEs unless it is required and she finds DBEs through word of mouth. After soliciting DBEs she uses them about 80 percent of the time. She stated that the average price on subcontracts that she gives to DBEs is between $20,000 and $40,000.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, reported using minority- and female-owned subcontractors. He locates DBEs through association groups that have such listings. He stated that overall he has had a positive experience subcontracting work to DBEs. He typically subcontracts various types of engineering and construction management jobs to DBEs. He stated that these are generally smaller scale projects and range in value from $5,000 to $25,000.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that her experiences with DBEs have been mostly positive; the only occasional issue may have been managing the subcontractor's work.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that his experience working with DBEs has been positive. He stated that he solicited DBEs for a major project at the Los Angeles World Airport, not only because the contract required it, but because he also wanted DBE participation. He stated that he subcontracts engineering, cost estimating, specifications, and move coordinator work to DBEs at an average price of four (4) to six (6) figures depending on the discipline and project duration. The frequency of DBE solicitations depends on the DBE's work history and project requirements.

**A few prime contractors reported having had a negative experience working with DBEs. (Interviewees #13, 39).** Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had major problems in the past with a WBE that he hired, but it was a long time ago, and he declined to provide further detail.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that she had a negative experience working with one (1) DBE because she felt that the company was inept. She does not like having DBE certification required and would prefer to focus on quality of work over certification.

**Several interviewees indicated they have little or no experience working with DBEs in either the public or private sector. (Interviewees #2, 4, 5, 6, 7, 8, 11, 16, 17, 52).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he uses subcontractors for drafting services in the private sector, but he does not perform any work in the public sector. Therefore, he uses these subcontractors only in the private sector. Interviewee #2 stated that he has not used any DBEs on Consortium projects because he has not performed any work for the Consortium. Interviewee #2 stated that he is not sure whether he has ever used any DBEs. He stated that he may have used a DBE for drafting services but is not sure whether the firm is a DBE. He stated that he has used this firm on four projects. Interviewee #2 stated that he has not used many DBEs, but he has had a positive relationship with the drafting firm. He stated that besides the drafting firm he has not used any other DBEs on private sector projects. He said that he uses the same firm because he knows the firm and has developed a working relationship with them over the years.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that his company was awarded a contract by the City of San Diego for on-call geotechnical services in the mid 1990s and was a prime contractor on that project. There were occasions on the project where his company needed a subcontractor, for instance, to drill holes, and he would look for a DBE drilling contractor to drill holes. Interviewee #4 could not answer whether he used the same subcontractors in the private sector and the public sector because his private sector work as a prime contractor was much earlier (1979). Interviewee #4 has not worked on any Consortium projects and therefore, has no experience using DBEs on such projects. He stated that he has not used any DBEs on private sector projects because the opportunity never came up.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that has had no experience using DBEs on Consortium projects because he

has not worked on any Consortium projects. He stated that other than a structural engineer who might have been a DBE, he has not used any other DBEs on private sector projects. He stated that he has used the structural engineer about twice a month in all of his jobs for the past five (5) years. Interviewee #5 stated that he has never tried to find any other DBEs to work with but stated that it would be a good idea. He stated that he uses this DBE rather than looking for any others because he has known the structural engineer for many years and he has always used him. The structural engineer always does a good job, his work is timely, fast and inexpensive and he is readily available. Interviewee #5 stated that he cannot say that other DBEs are not readily available because he has never tried to use another. He stated "when something works you do not need to fix it."

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, has referred customers to DBEs, but has had no occasion to hire a DBE because he is a subcontractor and sells materials.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has used subcontractors at times (although he reported acting as a subcontractor 98-99 percent of the time) and he has probably used DBE subcontractors before but did not know because he never asked. Interviewee #7 stated that he has not had any experience using DBEs on Consortium projects. Interviewee #7 could not describe his experiences with DBEs because he was not sure which subcontractors were DBEs and whether he had worked with any.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, has responded to an RFP with a DBE component but has never actually worked with a DBE subcontractor.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she has never worked with a DBE although she did try once to work with a DVBE.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, has not really used DBEs on the company's projects for Consortium entities, indicating that there is no need to do so. Interviewee #16 works more with the various agencies rather than with other DBE companies. Interviewee #16 has no experience working with DBEs in private sector projects. Interviewee #16 has not had particular experiences with other DBEs of note, but the company does use small businesses whenever possible, despite that they may not be certified as minority-owned or disadvantaged businesses. Interviewee #16 very rarely likes to use large companies unless the scope of a project is so big that a smaller company cannot handle a job. Interviewee #16 notes that small businesses may not provide the best price, but they usually provide the best overall work experience and value. Smaller business, noted Interviewee #16, tend to value long-term relationships that are established over time.

**No prime contractor reported having refused to work with a DBE because they were a DBE. However, some prime contractors reported having declined to work with a DBE for reasons other than their certification. (Interviewees #3, 9, 14, 13, 15, 17, 19, 22, 34, 53).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, reported that he has never refused to work with a DBE, and does not specifically know of that happening with any other prime. He stated that what might happen is that there might be one or two people within the DBE firm who the prime contractor might not like. The prime contractor may

request that particular person not participate in the project. He stated that this is much more likely than refusing to work with the DBE. He does not believe that any of his colleagues, even the most prejudiced would not work with a DBE because, for instance, they do not believe women should be geologists. Interviewee #3 stated he does not believe that kind of thing would happen. He does think that there are situations where someone inside the firm would cause you not to work with that person, but not the firm in general.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he has decided to work with one firm over another, but it was not related to a firm's DBE certification.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had turned down teaming opportunities with both DBEs and non-DBEs in the past.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, could not remember whether he had ever refused to work with a DBE.

Interviewee #15, a Hispanic American male owner of a MBE certified engineering and construction company has sometimes refused to work with DBEs, but it is a business and financial concern, not because of their certification status.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has, in the past, refused to work with DBE companies because of their business ethics, but not because of their status as a disadvantaged business.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her firm has refused to work with a DBE in the past only because the companies could not come to terms.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has never refused to work with a DBE based on their DBE status. She stated that the decision to not work with a DBE would have been based on their work and not their certification.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported that he may have refused to work with a DBE if they did not produce.

**Minority and female-owned business perceptions of being utilized by prime contractors in the public and private sectors**

**Some minority- and female-owned business reported that the same prime contractors utilize them in the private and public sectors. (Interviewees #1, 9, 14, 15, 20, 22, 23, 28, 33, 36, 45, 49, TA #1, 2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, reported that the same prime contractors utilize his business in both the private and the public sectors. Interviewee #1 stated that he has not recently been directly impacted by a prime contractor refusing to work with him because he is a minority, but he is "sure" that that condition still exists in the field.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that the same prime contractors use his business both in the private and the public sectors. Interviewee #9 stated there is no notable difference between being utilized on Consortium and non-Consortium public sector projects or private sector projects.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, rarely does work in the private sector, but he continues to get regular calls from the same prime contractors in the public sector for work — his business is very competitive.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has pursued work with prime contractors in the private sector and reported that the same prime contractors use her firm in the public and the private sectors. She stated that this is due to her firm's work history and past performance; she instructs her team that every project is a marketing tool.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the same prime contractors utilize her firm in the public and private sectors. She attributed this to her ongoing relationships and experience with the work proposed. She stated that she has attempted to work with prime contractors in the private sector. She stated that she is solicited for price quotes on private sector jobs approximately 30-40 percent of the time; these projects do not have goals. She stated that these solicitations result in work approximately 60 percent of the time and the type of work is the same as it is in the private sector.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that the same prime contractors sometimes utilize them in the public and private sectors due to their reputation, work, and performance. He has attempted to work with prime contractors in the private sector. He stated that they are solicited daily for price quotes on private sector projects that come in on the fax machine; he did not know whether the private sector projects had goals. He stated that these solicitations result in work 5 percent of the time. They perform hauling and demolition work in the private sector.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, reported that same prime contractors utilize his business in the public and private sectors. He stated that this is due to his number of years in business, credibility, relationships and professionalism. He stated that his company always pursues projects. He stated that the private sector projects do not generally have goals, and solicitations from prime contractors result in work approximately fifty (50) percent of the time.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, reported that the same prime contractors utilize her in both the public and private sectors and this utilization is based on her qualifications. She reported however, that although prime contractors "always" solicit her for price quotes on private sector projects, these solicitations rarely result in work. She stated that she has attempted to work with prime contractors in the private sector, however, these attempts have not been very successful.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that it depends upon the prime contractor whether they utilize her in both the private and public sectors. She stated that she tries to maintain her relationships so that she can get work and good referrals. She stated that she has attempted to obtain work with prime contractors in the private sector and she sends out letters and a newsletter that she has developed. She is not solicited very often for work on Consortium projects. She stated that she has not received many solicitations or work resulting from solicitations lately and was not sure if that was attributable to increased competition or if things were changing.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the same prime contractors utilize her across the public and private sectors and stated that she receives a lot of referrals due to the quality of her work. She stated that in the private sector she is frequently solicited to work on projects and many of these projects have goals because they receive federal funding. She stated that these solicitations result in work almost all of the time and she receives good work from the prime contractor.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that the same prime contractors utilize his firm across the public and private sectors. He stated that this is due to the quality of his work and his company's reputation.

TA #1, the President of the Latino Business Owners of America, stated that prime contractors who build a relationship with a subcontractor will use that subcontractor on their public sector and private sector jobs because of the trust factor.

TA #2, the President of the Black Contractor's Association, stated that once a DBE subcontractor breaks in and establishes a relationship with a prime contractor in the public setting, the subcontractor generally stays "in" with the prime contractor.

**Some minority and female-owned businesses reported that the same prime contractors do not utilize them in the private and public sectors. (Interviewees #2, 4, 12, 13, 16, 17, 21, 24, 26, 27, 29, 30, 31, 32, 35, 37, 38, 40, 47, 48, 50, 51).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that there is a difference between the prime consultants who use him in the private sector and those who use him in the public sector. He stated that there are architects and developers who strictly go after public sector work and there are some that only go after private sector work.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has never really considered whether the same prime contractors who use him in the public sector use him in the private sector. For example, he noted working with a prime contractor that only utilizes his firm for public sector work, although he is aware that the prime contractor also does work in the private sector. Interviewee #4 stated that some of the large prime contractors do private sector work but never use the DBEs for that work. Interviewee #4 stated that he suspects prime contractors use him on public jobs because his company has been around long enough and has a good relationship with the public agencies so the prime may increase its chances of winning a bid if it uses Interviewee #4 on the public sector work; in contrast, he stated that there is no benefit to the prime contractor for using Interviewee #4's firm in the private sector.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the same prime contractors who use him in the public sector do not use him in the private sector. He stated it has been "clearly marked" that they only work for their public sector prime contractors in the public sector usually because of the discipline. He stated that in the private sector they are working for architects whereas in the public sector they are working for engineers.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the prime contractors that he works with focus their activity in the public sector. Interviewee #13 stated that there is no difference as to being utilized on Consortium and private sector projects.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that when the company functions as a subcontractor, the same prime contractors do not use him in the public and private sectors because the nature of the work is different.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the prime contractor's decision to use his firm across the public and private sectors depends largely on the mercy of the project manager. Interviewee #17's biggest concern is that sometimes the teams who make proposals are not the teams delivering the project – this makes business very difficult as a subcontractor. Interviewee #17 stated that this disconnect leads to broken promises and understandings from the time of proposal to job execution.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that the same prime contractors who utilize her business in the public sector do not use her business in the private sector; she assumes that if the opportunity presents itself they would.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that the same prime contractors who use her in the public sector do not use her in the private sector. She does not know why, but stated that the prime contractors have their own relationships.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the same prime contractors that use her in the public sector do not use her in the private sector; she stated that they do not do so because it is not required.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that he has tried to work with a prime contractor in the private sector,but these efforts have not been successful. He stated that some of the private sector projects have goals.

Interviewee #29, an African American male-owned electrical contractor, stated that he does not do any work in the public sector, and he does not know how to find prime contractors who need subcontractors. He stated that he is solicited for work every day on private sector projects but business has been slow over the past year. He stated that in the private sector the goal is to get the project done as cheaply as possible. He stated that because of his ethnicity he is, many times, expected to do the work for dirt cheap. He gave the example of a project that should have cost $10,000. At that time, that was the going rate and it would have covered his costs as well as paid his employees. The prime contractor cut the staff and Interviewee #29 eventually cut his price in half to $5,000 just

to keep the job and pay his men. He stated that they want him to work as cheaply as possible while keeping the credibility of the project and that is very hard to do. He stated that most of his work comes through relationships and referrals. He stated that people want the job done well and he will discuss the price at the beginning of the project. He stated that solicitations almost always result in work; it is very rare when he receives a call and does not get the job.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that the same prime contractors do not use his business in both the public and private sectors for a simple reason: it is not required. He stated that the goals on private sector projects are different and normally do not require that a DBE be a part of the team. He stated that he does not get many calls to perform work in the private sector.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he does not do work in the private sector very often. He stated that the overhead and the insurance are too expensive to maintain. He stated that working in the private sector comes with a lot of risk and exposure to a significant amount of overhead even when business is slow. He stated that his attempts at seeking work with prime contractors in the private sector have not been successful. Interviewee #31 stated that prime contractors often solicit him for work in the private sector but these solicitations rarely result in work. He stated that he submits "responsible" price quotes on bids that interest him. He stated that most of his work comes through recommendations from previous work and not through solicitations.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he has tried to work with prime contractors in the private sector but he keeps getting the run around and has been unsuccessful in that regard. He stated that they do receive solicitations from prime contractors in the private sector but it is not often. He stated that he had "not hit the nail on the head yet" in terms of getting work in the private sector but he will keep trying; he does not know why they have not received work yet.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that the same prime contractors do not use her in the public and private sectors (although she reported acting as a prime contractor 100 percent of the time). She stated that she has tried to work with prime contractors in the private sector but these efforts have been unsuccessful. She stated that she has an alliance with a large firm and she is included in share pricing for RFPs. She stated that on the instances when she has been solicited for work in the private sector, it was on projects that did not have goals.

Interviewee # 37, an African American male owner of a SBA-certified architecture firm, stated that the same prime contractors do not use him in the public and private sectors. He stated that he assumes the prime contractors are utilizing different firms.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the same prime contractors do not use him across the public and private sectors. He believes it is because of the "good ole boy network." He stated that he will continue to try to obtain work in the private sector.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that prime contractors never solicit him for price quotes in the private sector. He

stated that prime contractors have their own team and only utilize his business or other DBEs when it is required and they receive points or other credit. He stated that he has not attempted to obtain work with a prime contractor in the private sector.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has tried to obtain work with prime contractors in the private sector but the same prime contractors do not utilize his firm across the public and private sectors. He stated that he is not often solicited for work on Consortium projects.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the prime contractors who use him in the public sector do not use him in the private sector. He stated that this is due in large part to the fact that there is not a [DBE] requirement in the private sector; he stated that the prime contractors utilize their own network of subcontractors for private sector projects. He stated that he no longer tries to obtain work with the public sector prime contractors in the private sector.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the prime contractors who utilize him in the public sector do not utilize his firm in the private sector. He stated that the prime contractors that use his firm in the public sector do so because of the mandatory requirements; he stated that he has stopped trying to seek work with prime contractors in the private sector because it is not an efficient way to run his business. He stated that prime contractors do not solicit his firm in the private sector. He stated that private sector projects do not have goals, which makes it highly likely that this is the primary reason that he does not get work in the private sector.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the same prime contractors do not utilize his firm across the public and private sectors. He stated that he has tried to obtain work in the private sector with those firms who have utilized him in the public sector, but this has not been successful, he believes, because those firms are not required to use him in the private sector.

**Some minority- and female-owned businesses reported not seeking out work from prime contractors in the private sector. (Interviewees #18, 25, 26, 30, 40).** Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, could not think of a private sector project on which she has functioned as a subcontractor. As a subcontractor on Consortium projects, though, Interviewee #18 recounted a positive experience.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has not really attempted to gain much work in the private sector based on his experience in not receiving the work and the prime contractors sticking within their own "good ol' boy" network.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he rarely attempts to obtain work from prime contractors in the private sector. He stated that prime contractors do not have any reason to share the wealth because there is no mandate to do so. He also stated that he is rarely solicited by prime contractors on private sector projects. He stated that he believes he only receives solicitations because of something specific that he does, or he believes it is probably political.

**Some minority and female-owned businesses reported positive experiences working on Consortium projects. (Interviewees #14, 16, 18, 19, 22, 24, 26, 28, 30, 38, 42, 43, 48).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated he has had a good experience working with the Consortium; he stated that the Consortium is good at paying on time and he has developed good relationships with Consortium staff.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his company's experience on public sector projects has been good. Interviewee #16 stated that having a DBE certification does not matter at all in the private sector.

Interviewee #19, an MBE-certified African American male attorney, reported success in working on a Consortium project; he indicated that this was a project with goals.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that prime contractors regularly solicit price quotes on consortium projects. She stated that these are projects with goals and result in work approximately 60 percent of the time. She stated that these are subcontracts in the area of planning, engineering, community relations and public involvement.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that prime contractors solicit price quotes from her on RFP bids every four to seven years. She stated that these projects have goals and she submits bids in response to these solicitations. These solicitations result in Consortium work "all the time." She stated that these are contracts related to investigation for the workers' compensation claims department.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that prime contractors solicit price quotes from her to work on Consortium projects fairly regularly. She stated that these projects have goals and these solicitations result in work approximately 50 percent of the time.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he is solicited all the time for price quotes on Consortium projects. He stated that he has not seen any Consortium projects with goals lately. He stated that his company does submit price quotes but he has not seen many projects lately; he stated that the L.A. County MTA has not requested any bids. He stated that he has a pending project in New York City.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that the number of solicitations they receive for work on Consortium projects is dependent on the types of contracts and the necessity of their services. He stated that these are projects with goals and result in work approximately 50 percent of the time.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he is solicited on Consortium projects when his services are needed; these are no longer contracts with goals. He stated that only 20 percent of the projects result in work.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, has a direct contract with the L.A. County MTA. She believes that her DBE status helped her to get that project. She stated that when her contract with L.A. County MTA expires they let her know and she bids again. The project is to print brochures and other materials.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that prime contractors solicit his firm to work on Consortium projects and these solicitations result in work approximately 40 percent of the time. He does not know whether these are Consortium projects with goals.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that prime contractors solicit him for work on Consortium projects any time there is a need for electrical contracting. He stated that these are typically projects with goals. He stated that he submits price quotes in response to solicitations and these result in work 75 percent of the time.

**Some minority- and female-owned businesses reported mixed experiences being utilized on Consortium projects. (Interviewees #15, 20, 23, 25, 27, 31, 32, 37, 40, 45, 49, 50, 51).** Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported that most of the Consortium projects are too big when his company is asked to subcontract, and that they do not like to work for big companies as a subcontractor.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that prime contractors often solicit price quotes for Consortium projects. She stated that these are projects with goals. Interviewee #20 stated that her firm is in such a position that they will not respond to a solicitation unless they know who is soliciting. She stated that if they are going to get the project they will discuss budgets, but she is not going to help some firm that she does not know call around and get different quotes and submit the best plan to get the work. Thus, she stated that typically these solicitations do not result in work and she does not receive subcontracts on projects.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that he is often solicited for price quotes on Consortium projects; he did not know whether these were projects with goals. He stated that these solicitations rarely result in work — maybe a half of a percent of the time. The solicitations are for trucking subcontracts.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, reported prime contractors have solicited price quotes from him a few times on Consortium projects with goals; these solicitations have never resulted in work.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that the concern with working on Consortium projects is getting paid by the prime contractor. He stated that payment is often delayed even after the prime contractor has been paid by the Consortium. He stated that when he is solicited for a price quote, the prime contractor will first ask if he is a DBE, MBE or SBE and then will request a quote (and qualifications). He did not know whether these were projects with goals. He stated that these solicitations used to result in work about 50 percent of the time but that has recently decreased to 20 percent. He stated that L.A. County MTA now infrequently solicits projects.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he is solicited for price quotes quite often on Consortium projects. He believes the prime contractors are doing this as a part of their good faith effort and are not truly intending to give him work. Nevertheless he does obtain plans for opportunities he's interested in and he submits "responsible quotes" that are his best price — not just a guesstimate but an educated estimate. These are Consortium projects with goals. He stated that he submits price quotes in response to solicitations on Consortium projects that he believes are viable projects. He stated that these solicitations do not normally result in work. Interviewee #31 said that he has only worked on one project for the L.A. County MTA, but he has submitted several proposals for them including three on the day of his interview.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he is not solicited "that often" on Consortium projects. He stated that so far none of these solicitations have resulted in work. He stated that it seems to him that the winner always has the lowest price regardless of the quality of the product.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that prime contractors do not solicit his firm very often for price quotes. He stated that contracts generally last a couple of years and he may receive a solicitation twice a year. He stated that he submits price quotes in response to the type of work that his firm specializes in and is awarded architecture and design subcontracts only 20 percent-30 percent of the time.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, reported that he is not solicited "very often" by prime contractors for work on Consortium projects. He stated that when he is solicited it is on projects with goals, which is why the prime contractors solicit his business. He stated that he does respond to these solicitations, but they rarely result in work on Consortium projects.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she has been solicited by a prime contractor for a Consortium project approximately three times in the past 10 years. She stated that these were typically Consortium projects with goals. She stated that of the solicitations she responded to, none of them have resulted in any work.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that prime contractors do not solicit his firm often for work on Consortium projects. He stated that there are not that many projects any more. He stated that there are no longer as many projects with goals and indicated that the process has changed since the passage of Proposition 209. He said that he does submit price quotes in response to solicitations on Consortium projects, but he could not determine how often those solicitations actually result in work.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he has been solicited only twice for work on Consortium projects. He stated that these were projects with goals and his responses resulted in work on one of the projects.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported that prime contractors solicit price quotes from him for Consortium projects approximately 50 percent of the time. He stated that these are always projects with minority

or DBE goals. He stated that he does submit price quotes in response to these solicitations, but "it takes about ten bids to get one job." He indicated that when he does receive work, they are typically jobs related to construction management, estimating, performance, and engineering.

**Most interviewees reported that a prime contractor has not and would not refuse to work with them because they are a DBE, however, a prime contractor may have refused to work with them for other reasons. (Interviewees #2, 9, 10, 12, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 38, 40, 42, 43, 44, 45, 47, 48, 49, 51, TA #1, 2).** Interviewee #2 stated that he would not say that a prime consultant has refused to work with him because he is certified with Caltrans, but he is turned down by architects on a routine basis. He stated that this is not because he is a DBE; the architects are not even interested in knowing if he is a DBE. He stated that he is often turned down because of the relationship between the architect and the engineer that architect has built a relationship with. He stated if an architect has been working with a certain engineer, the architect often wants to continue working with that engineer.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that no one has said directly to his face that he would not receive a contract or work simply because of his DBE status.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he does not think a prime contractor has ever refused to work with him because he is a DBE; at least no one has ever said that or made him feel like that is the reason.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he is considered for work because of his credibility; he does not believe that this consideration has been affected by his DBE status.

TA #1, the President of the Latino Business Owners of America, stated that a prime will never refuse to work with a DBE, but instead will use a DBE for a smaller amount or will sometimes state that it is using a DBE and change to another subcontractor. He stated that this occurred as recently as two to three years ago. TA #1 stated that the incident was not reported because he does not know who you would report it to.

**A couple of interviewees reported feeling as though a prime had refused to work with them because they are a DBE. (Interviewees #16, 37).** Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, noted that while no company has ever specifically told him that his DBE status precluded the company from getting work, he has been blown off and he knows that is actually the case. The company makes strong efforts, but large companies will generally end up using whoever they want.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he feels that a prime has probably refused to work with him because he is DBE, but he did not know it. He stated that no one has said it outright but it is more or less a feeling that he has.

**Some interviewees reported that they did not know whether a prime had ever refused to work with them because they are DBE. (Interviewees #4, 18, 50).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated

that he has no idea whether a prime has ever refused to work with his company because it is a DBE; he stated if so, the prime would never say so.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, did not know whether prime contractors have refused to work with her because she is a DBE — many projects fail to materialize.

### B. SDCRAA anecdotes regarding DBE utilization

The following anecdotes regarding DBE utilization were obtained from interviews that the study team conducted in connection with BBC's 2009 SDCRAA study.

**Successful MBE/WBE firms**

**Several interviewees reported being aware of successful minority- and female-owned firms.** SDTA #3, representing a local chamber of commerce, said that there are a number of successful minority- and female-owned firms in the San Diego area, both small and large. Regarding the success of those firms, SDTA #3 said, "I really don't think it's their gender or ethnicity — it's hard work and determination [that explains their success]. …"

SDTA #2, representing a Hispanic American trade organization, also reported that there are a number of successful minority- and female-owned firms in the San Diego area. However, he indicated that they only work in certain industries: "Successful DBEs are mostly in janitorial or landscaping industries."

When asked to name successful MBE/WBE subcontractors, Interviewee #SD28, representing a Caucasian female-owned firm, was able to name two. She said that to be successful like those firms, DBE firms have to "be active — be at every mixer, every association [event]." She added that DBE firms have to make an effort to "keep [their] name in front of everybody." She also indicated that small firms cannot turn down jobs — they have to be willing to bid on and accept all available contracts.

SDTA #9, representing a public works trade organization, reported that many of his organization's minority and female clients have a sense of entitlement that is detrimental to their success: "A lot of our clients have bad attitudes. Those clients, we see don't do as well in business. For example, there is a sense of entitlement that used to be among the minority-owned businesses that they should have a successful business because of their classification. I have seen this entitlement change from minority-owned businesses to disabled vet[eran]-owned businesses now."

Similarly, Interviewee #SD3, representing a Caucasian male-owned firm, said that MBE and WBE firms who get into the business with a sense of entitlement do not succeed. He said that minority- and female-owned firms need a strong work ethic to be successful.

Several interviewees made non-specific comments indicating that they were aware of successful minority- and female-owned firms across several different industries (e.g., Interviewee #SD3, Interviewee #SD11, Interviewee #SD19, Interviewee #SD27, Interviewee #SD32, Interviewee #SD33, Interviewee #SD34, Interviewee #SD37, Interviewee #SD41. Interviewee #SD45, Interviewee #SD46, SDTA #1, and SDTA #9).

**Some interviewees had trouble naming successful minority- or female-owned firm.** When asked if there were any successful MBE or WBE firms in San Diego, SDTA #5, representing a government advisory commission on minority issues, said that if there are any she is unaware of them. She went on to explain, "What has happened is that many of them who had the means have already left San Diego or many have gone out of business … [MBE/WBE firms] have been driven out."

Interviewee #SD38, representing a Hispanic male-owned firm, had trouble naming a female-owned firm and had trouble naming minority-owned firms that were not Hispanic: "We know people with their own landscaping or drywall company, but women don't come to mind. Most of what you will see is Hispanic due to our geographic location."

Interviewee #SD40, representing a Caucasian male-owned firm, also had trouble naming successful MBE/WBE firms. He said, "There aren't a lot of [MBE/WBE firms]. This is one of our issues here in San Diego."

Interviewee #SD44, representing a Hispanic male-owned firm, could only name one other successful local MBE/WBE firm in his firm's industry.

**Reported utilization of DBEs by prime contractors in the public and private sectors**

**Several interviewees indicated that they solicit bids from minority or female-owned firms but primarily for public sector work.** Interviewee #SD20, representing an Asian American male-owned firm, indicated that including minority-owned or female-owned firms on a proposal makes it more competitive in the public sector but not in the private sector. Interviewee #SD20 described MBE and WBE participation as a "non-issue" in the private sector.

Interviewee #SD11, representing a Caucasian male-owned firm, indicated that his firm only solicits bids from MBE and WBE firms when those solicitations are required: "When [MBE or WBE participation] is required to do work and complete the deal, we find someone to do it and pay them 2-3 percent more and [we] do all the work."

Interviewee #SD4, representing a Caucasian male-owned firm, reported that when mandatory DBE goals were in place for public sector projects, he would solicit bids exclusively from minority- and female-owned firms.

Interviewee #SD3, representing a Caucasian male-owned firm, said that his firm has relationships with at least one minority- or female-owned firm in each construction industry that is outside of his firm's expertise and, when necessary, subcontracts work out to those firms. However, he went on to say that his firm tries to avoid subcontracting any work at all.

Interviewee #SD32, representing an African American male-owned firm, said that because his firm is a DBE certified firm itself, DBE goals usually do not affect the process by which the firm selects subcontractors. However, he indicated that his firm has worked with a number of MBE/WBE subcontractors, and the experience of working with those firms is comparable to working with non-DBE subcontractors.

**One interviewee indicated that their firms solicit bids or price quotes from minority or female-owned firms for moral reasons and regardless of sector.** Interviewee #SD20, representing an Asian American male-owned firm, said that when he selects subcontractors, he tries to use local firms as much as possible. Regarding that philosophy, Interviewee #SD 20 said, "What I believe is giving back to the community. That's what distinguishes us from the other firms."

**Several interviewees reported difficulties associated with soliciting bids from minority- and female-owned firms because those firms are not available to do the required work.** Interviewee #SD6, representing a Caucasian male-owned firm, reported a number of difficulties associated with soliciting bids from MBE and WBE firms. He indicated that there are only a small number of minority- or female-owned firms qualified to complete the work that his firm requires, and even a smaller number respond to solicitations. He went on to say that his firm has frequently received hostile responses from MBE and WBE firms.

Interviewee #SD24 reported that although his firm regularly subcontracts work out to MBE and WBE firms, sometimes it is difficult finding minority- and female-owned subcontractors that do work in industries that his firm requires: "Given what the contract requires, [sometimes] there's just not firms that do [that type of work]. Environmental consulting is a pretty small niche in the economy, and with those specialties, it's difficult to find firms that meet those goals."

Similarly, Interviewee #SD7 stated that there are not any MBE or WBE firms working in the industries that his firm requires: "There are only a couple of firms in the country that can handle runway rubber removal, taking the deposits off the runway without damaging it."

With regard to soliciting MBE/WBE subcontractors for work, Interviewee #SD31, representing a Caucasian male-owned firm that is DVBE certified, said, "I wouldn't know where to find one if I wanted to."

SDTA #7, representing a construction trade organization, said that there simply are not many opportunities for prime contractors to sub out work to minority- and female-owned firms due to the small population of minorities in San Diego: "The City of San Diego has terrible minority numbers, but 95 to 98 percent of their projects are overlay or sewer and water. There just [aren't] a lot of [minority] subs in [those industries]. You dig a hole and put a pipe in it. Who do you sub it to?" SDTA #7 said that in those situations, prime contractors "just fill out the paperwork, good faith effort." He went on to say, "You can't go explain that to a black city council member that's got a constituency that thinks they should get a huge amount of work out of these things."

Interviewee #SD7, representing a Caucasian male-owned firm, reported that fulfilling DBE goals can be challenging because minority- and female-owned firms that appear on approved lists are not identified well. For example, "carpet cleaning" firms might be listed as "painting" firms.

**One interviewee indicated that claims about MBE/WBE firms being unavailable are baseless.** SDTA #10, representing a supplier trade organization, explained that many public agencies in the San Diego area assert that they cannot find minority- and female-owned firms from whom to solicit bids. SDTA #10 stated that that assertion "makes no sense" and that the City of San Diego and other public agencies are "not serious" about addressing MBE and WBE issues.

**Many interviewees reported positive or neutral experiences working with minority- or female-owned firms on public sector projects.** Interviewee #SD7, representing a Caucasian male-owned firm, reported that when his firm finds a qualified minority- or female-owned firm, they try to work with them again on future projects. Interviewee #SD7 cited an example of an MBE asbestos removal firm with which his firm liked working and that they contacted again about future work.

Interviewee #SD11, representing a Caucasian male-owned firm, said that his firm has relationships with several minority- and female-owned subcontractors with which they work regularly. Regarding his firm's selection of subcontractors, Interviewee #SD11 said, "We work with the subs who are the lowest, qualified bidder."

Interviewee #SD25, representing a Caucasian male-owned firm, reported that his firm regularly maintains over 20 percent participation from MBE, WBE, and SBE firms. He said that every member of their contracting "team" is an MBE, WBE, or an SBE.

Interviewee #SD27, representing a Caucasian male-owned firm, reported that his experience working with minority- and female-owned firms is no better or no worse than working with majority-owned subcontractors.

Interviewee #SD26, representing a Caucasian male-owned firm, indicated that his firm has worked with several MBE and WBE firms on public agency projects, and that 60 percent of those experiences have been positive. Of the positive experiences, Interviewee #SD26 said that he saw the DBE program "pay off" and give MBE/WBE firms the opportunities that they needed to grow.

Interviewee #SD24, representing a Caucasian male-owned firm, reported that his firm "has lots of experience in working with [MBE and WBE subcontractors]." He noted that the quality of those experiences was "all over the board" and was dependent on the quality of each individual firm.

**Two interviewees reported negative experiences working with minority- or female-owned firms on public sector projects.** Interviewee #SD6, representing a Caucasian male-owned firm, cited an example in which he accepted a subcontractor bid from a minority-owned firm on a public sector project with DBE goals. It turned out that the firm was not qualified to do the work, and Interviewee #SD6 had to use a different DBE firm. The second DBE firm was more expensive than the first one, and the agency did not cover the difference in cost — it came out of his firm's profits.

Interviewee #SD4, representing a Caucasian male-owned firm, recounted a public sector project in which he was required to use a DBE subcontractor for two pieces of work on a historic preservation project. Interviewee #SD4 did not have a positive opinion of the subcontractor's work: "They killed the job for me. They did not keep up to schedule and they were not proactive in addressing problems."

**Some interviewees offered comments about the differences between utilizing minority- and woman-owned firms in the public and private sectors.** SDTA #11, representing a veterans trade organization, reported that, compared to the private sector, the public sector does a better job of addressing some of the barriers that disadvantaged businesses face and are more conscious of the non-mandatory goals that remain for MBE and WBE firms.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that in the private sector MBE or WBE status does not play much of a role in selecting subcontractors. Instead, that selection process is largely dependent on the desires of the clients (e.g., How quickly does the client want the work completed? How much is the client willing to spend?).

Interviewee #SD5, representing an African American male-owned firm, indicated that his firm has worked as a subcontractor on several public sector projects, primarily because the prime contractor needed to meet DBE goals. However, Interviewee #SD5 went on to say that he has worked as a subcontractor on at least two public sector projects with no mandatory DBE goals in place.

**Minority and female-owned business perceptions of being utilized by prime contractors in the public and private sectors**

**Some minority- and female-owned firms reported seeking out prime contractors to bid on projects rather than waiting for solicitations.** Interviewee #SD20, representing an Asian American male-owned firm, reported that, at least in the public sector, his firm takes a proactive approach to winning subcontracts. They research available projects, determine which prime contractors would likely be interested in those projects, and try to sell the project and themselves to those prime contractors. Regarding his firm's approach, Interviewee #SD20 explained, "I don't wait for the prime to reach out to me. That's too late."

Similarly, Interviewee #SD5, representing an African American male-owned firm, reported that his firm finds subcontracting opportunities by calling prime contractors that appear on planholders lists. He went on to say that his firm's approach has helped them build relationships in the construction industry.

**DBE utilization following Proposition 209**

**Several interviewees reported a decline in participation of minority- and female-owned firms after Proposition 209 passed and prohibited mandatory DBE goals on state-funded contracts.** Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that the situation changed substantially for minority- and female-owned firms after Proposition 209 passed: "Fifteen years ago [the situation] was a lot different. Ten to fifteen years ago there was a mandatory goal … [MBE/WBE firms] were on the bigger projects. … [Prime contractors] used [MBE/WBE firms] because they had to meet the goal." Interviewee #SD14 went on to say that after Proposition 209 passed prime contractors awarded far fewer contracts to minority- and female-owned firms. He said that a firm's status as low bidder became the most important factor: "The way times are now, it's the low bid that will get you the job."

Interviewee #SD2, representing a Caucasian female-owned firm, indicated that removing DBE goals after Proposition 209 hurt many minority- and female-owned firms. She said that DBE programs "gave [MBE/WBE firms hope … after [Proposition] 209, they lost hope." She also stated that there would be more African American contractors if Proposition 209 had not passed, and that she saw a number of strong, African American-owned firms go out of business as a result of Proposition 209. With regard to her own firm, Interviewee #SD2 explained that after Proposition 209 passed, she no longer received as many requests for bids from prime contractors: "[It was like] night and day … the phone calls just stopped."

Interviewee #SD5, representing an African American male-owned firm, reported that after Proposition 209, he won far fewer contracts. He said that he had a lucrative business as a minority subcontractor throughout the first half of the 1990s, but over a nine month period following Proposition 209 his business plummeted, leading him to liquidate it in 2000.

SDTA #2, representing a Hispanic American trade organization, indicated that his organization engaged in extensive outreach with minority- and female-owned firms immediately following Proposition 209 in an attempt to offset its effects. However, SDTA #2 said that despite his organization's efforts, there was a dramatic decrease in the participation of MBE/WBE firms after the bill passed.

Interviewee #SD25, representing a Caucasian male-owned firm, indicated that prior to Proposition 209, seeking out MBE and WBE used to be highly encouraged, and he said that his firm would try to go above and beyond the stated DBE goals.

With regard to DBE goals, Interviewee #SD28, representing a Caucasian female-owned firm, indicated that those goals help her firm get work, and that the elimination of mandatory DBE goals (as the result of Proposition 209 and Caltrans implementing a race-and gender-neutral DBE program) hurt her firm's success: "I think [DBE goals] help, and I think [mandatory goals] going away hurt us."

SDTA #5, representing a government advisory commission on minority issues, reported that public agencies in San Diego stopped making efforts to promote diversity following Proposition 209: "As a result of Prop 209, [the City of San Diego] feels they can't do anything — the City can't be aggressive in demanding diversity or creating standards."

**One majority-owned Interviewee said that doing business became easier after Proposition 209 passed.** Interviewee #SD11, representing a Caucasian male-owned firm, remarked: "After Prop[osition] 209 passed, it was much easier to do business," He indicated that he is not supportive of DBE programs or of their intent. He said, "When you submit a bid they are all submitted on white paper with black ink. This is not a racial issue."

### C. Caltrans anecdotes regarding DBE utilization

The following anecdotes regarding DBE utilization were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**Experience with DBEs in the public and private sector**

#### 1. Experience soliciting DBEs

**Several of the interviewees indicated they had frequent experience with soliciting bids and price quotes from DBEs in both the public and private sectors.** Interviewee #CT10, an African American male-owned business, stated that prime contractors contact him requesting bid submissions on Caltrans projects "usually every time a bid comes out" and that the company receives work from about one third of the bids that it submits. According to Interviewee #CT10, the same 33 percent figure applies to the company's receiving non-Caltrans public sector jobs for which it bids as a subcontractor contractor and for which prime contractors are looking to meet a DBE goal.

Interviewee #CT17, a white male-owned business, stated that his experiences soliciting bids from DBEs on Caltrans projects have been positive. As for the private sector, he stated that his firm's experiences with soliciting bids from DBEs was "fine."

Interviewee #CT51, a Hispanic male-owned business, said that the company gets contacted much more frequently by prime contractors to work on other public sector jobs than it does for Caltrans jobs, and that the company had bid on four or five Caltrans jobs in the last three years but had not received any of them because it was not the low bidder. Interviewee #CT51 also stated that whether or not his or any other firm is chosen depends on whether they submit the low bid, noting that primes "want to be the low bidder in the process so they can get the job, and they are sure not going to use you if you are double their estimate or 20 percent or 10 percent or 1 percent higher, in some cases, than the non-DBE guys."

Interviewee #CT33, a Hispanic female-owned business, stated that the firm's receiving requests to bid as a subcontractor on Caltrans projects "goes in cycles" and that "right now it's happening more often[,]" as they had received three requests in the last two months. She stated that the requests have "been pretty constant [over] the past year."

Interviewee #CT9, a white male-owned business, noted that his division has experience soliciting bids from and utilizing DBEs on projects for other public agencies, including the City of Los Angeles.

Interviewee #CT67, a white female-owned business, noted that she had recently received a letter from a prime contractor saying that her company had been selected as part of a team for an upcoming Metropolitan Water District wastewater project for which bids are still out, and that this is the first time the company had ever heard back from a prime contractor to which it submitted a subcontracting bid.

Interviewee #CT13, a Pakistani male-owned business, indicated that his firm is contacted about as frequently by primes requesting price quotes on non-Caltrans public sector projects as it is contacted for quotes on Caltrans projects. However, Interviewee #CT13 stated that he has "more success" in getting work from these agencies, which are mainly water districts and cities, and that his experiences seeking and getting work from these agencies were more positive than those he had with Caltrans. Interviewee #CT13 also stated that "that work [for agencies other than Caltrans] is based on [the] qualifications and reputation of my company. It has nothing to do with me being DBE certified."

According to Interviewee #CT49, an African American male-owned business, it has been "a couple of years" since the company last bid as a subcontractor on a public sector job, but the company used to get contacted "frequently" by prime contractors to bid on Caltrans and other public sector jobs. Interviewee #CT33, a Hispanic female-owned business, felt that bidding as a subcontractor on non-Caltrans public sector work is "[g]enerally . . . an easier process[,]" depending on the city and/or agency, and she stated that the company receives a higher percentage of these jobs than it does the Caltrans ones.

**Some of the interviewees expressed general experience soliciting bids and price quotes from DBEs.** When asked about experiences with soliciting bids or price quotes from DBEs for private sector and non-Caltrans public sector work, Interviewee #CT31, an African American female-owned business, answered, "It's fine" and "No problems." Interviewee #CT31 stated that he and others at his company "are the ones that pursue getting all projects" and that prime contractors "do not

normally come to [them] . . . ." Interviewee #CT31 attributed this lack of solicitations from prime contractors to Caltrans' lack of enforcement of DBE goals and/or requirements.

According to Interviewee #CT31, when the company does get solicitations from prime contractors for work — whether it be for Caltrans, other agencies, or in the private sector — the "majority of the time [it is because] either the teams figure that they have to have WMBEs on their team . . . or they know about us and know that we are that good." Interviewee #CT31 also stated that the company experienced a decrease in solicitations to work on public sector projects after the passage of Proposition 209 in 1996. Interviewee #CT31 noted that the company saw this decline "in most city and county governments [and] public transportation agencies."

Interviewee #CT48, an Asian American male-owned firm, stated also that the frequency with which his company is contacted by prime contractors to bid on non-Caltrans public sector projects varies, and that, when it bids on these projects, the company winds up getting more than half of the jobs. Interviewee #CT32, an Asian American female-owned business, recounted a similar experience, and noted that, in general, her experiences soliciting bids from and utilizing DBEs for private sector and non-Caltrans public sector work were positive ones.

However, Interviewee #CT46, an Asian American male-owned business, thought that "a lot of times" it was "ambiguous" exactly what was required of firms in terms of "put[ting] the DBE requirements together for a bid … and the paperwork [for doing so]." He relayed one experience where his company lost a job because they were told that their "DBE wasn't correct."

Interviewee #CT49, an African American male-owned business, noted that his experiences soliciting bids from and utilizing DBEs on Caltrans projects and other public sector jobs had been the "just the same" as his experiences soliciting bids from and utilizing non-DBE firms.

**Some of the interviewees specifically noted solicitation experiences specifically with regard to private sector work.** Some interviewees indicated positive experiences with solicitation for private sector work. CATA #11, a minority trade association, noted that his association gets eight to ten faxes and e-mails a day from private sector firms asking them for quotes from their members. Primes "are always looking for subcontractors." His members have received these jobs. His association gets faxes from primes on City or County projects in connection with good faith efforts. His members have received these jobs.

Interviewee #CT10, an African American male-owned business, stated that primes request bids on private sector work (sometimes because they are trying to meet a DBE goal). He points out, however, although his company lands about a one third of the work for which it bid as a subcontractor in the private sector, he is contacted less frequently by primes requesting bids for private sector work.

Interviewee #CT48, an Asian American male-owned firm, stated that his company "sometimes" received requests from prime contractors to bid on private sector projects, that these projects were less than 10 percent of the company's overall work, that there were no DBE goals for these projects, and that the company winds up getting over half of these jobs. Interviewee #CT46, an Asian American male-owned business, felt that his company's success in landing Caltrans and other public sector work "runs in streaks," as sometimes months pass without getting a job, whereas other times "you'll get a couple in a row."

Interviewee #CT13, a Pakistani male-owned business, felt that the only reason he was solicited for work in the private sector was because of his qualifications. Interviewee #CT13 stated that he also gets contacted by primes requesting bids on private sector work with the same frequency as it receives requests for bids on public sector work. He indicated that firms doing work in the private sector "could care less" whether or not they are soliciting a bid from or utilizing a DBE firm on a project.

Interviewee #CT32, an Asian American female-owned firm, stated that she does not get solicited to bid as a subcontractor on private sector work.

Interviewee #CT29, a Hispanic male-owned business, stated that his company's private work comes from relationships and reputation built over the many years that the company has been in business. Interviewee #CT29 stated that its company's DBE status had a lot to do with obtaining subcontractor work in the public sector but not at all in the private sector.

**Some of the interviewees indicated they had very limited or no experience soliciting bids and price quotes from DBEs (Interviewees #CT1, # CT 7, # CT 32, # CT 48, # CT 65, and # CT 68).** Interviewee #CT1, a Native American male-owned business, stated that he does not have experience soliciting bids or price quotes from DBEs on Caltrans projects. Interviewee #CT65 (white male-owned) and Interviewee #CT48, an Asian American male-owned business, also have no experience soliciting bids from or utilizing a DBE on Caltrans projects.

Interviewee #CT68, a white male-owned business, said that he did not really have any experience with soliciting bids from and/or utilizing DBE firms on Caltrans projects and that he "d[id]n't care" whether the firms he used as subcontractors were DBEs or not. Because, he said, no agency ever required that he use a DBE subcontractor.

Interviewee #CT48, an Asian American male-owned business, had no experience soliciting bids or price quotes from or utilizing DBEs on private sector projects or non-Caltrans public sector projects either. Interviewee #CT65 also has no experience soliciting bids or price quotes on private sector projects. Interviewee #CT82, a white male-owned business, noted that he did not actively solicit DBEs because as soon as he was awarded a contract he already knew who he was going to use.

**Some of the interviewees indicated frustration with the DBE solicitation process.** Interviewee #CT13, a Pakistani male-owned business, said that he responds to requests to bid on Caltrans projects, but that his firm gets "two typical responses": the prime either does not respond at all, or the prime responds saying that the team has already been formed but thanking his firm for expressing interest. Interviewee #CT13 described this process as "frustrating" and wondered why his firm spent so much money and resources to get DBE certification without receiving any benefit. Interviewee #CT13 stated that he instead could have utilized his staff "for making some money for the company. . . . If that effort would have been made somewhere else I would have got more jobs, more projects, more money."

Interviewee #CT30, an Asian American male-owned firm, explained that the same DBEs get all the work and there is a disparity between the "haves and have nots." He observed that probably 20 percent of the DBEs "gobble up" 80 percent of the work because of their standing relationships. The remaining 80 percent of the DBEs are fighting for 20 percent of the work.

### 2. Experience utilizing DBEs

**Some interviewees recounted general and/or positive experiences with DBEs on public sector projects.** Interviewee #CT17, a white male-owned business, also said that his experiences with utilizing a DBE on public sector projects had been "very positive," that his company has "good relationships" with the firms it uses, and that his firm "like[s] working with them."

Interviewee #CT32, an Asian American female-owned business, said the company had more success getting subcontractor work on public sector jobs, but she did not know if these other agencies have DBE goals or not. She said that she got a contract with a municipality because she was a woman-owned small business, and that she had received several contracts for the Navy, who she said "has been successful in . . . awarding contracts to small businesses."

Interviewee #CT33, a Hispanic female-owned business, noted the company has used DBE subcontractors on public sector jobs for other agencies, and said that she has "had good success with all of them." She also stated that she "would not pick somebody just because they're MBE or WBE and not knowing that they're good at what they do."

**Some interviewees had experience with DBEs on private sector projects.** With regard to using DBE subcontractors in the private sector, Interviewee #CT9, a white male-owned business, stated that the company does use DBE firms, but that these firms are selected because he feels that they are "the best for the job." Because the company's reputation is on the line, he does not want to be "required to use a set aside firm that [he] may or may not want to be using." Interviewee #CT17, a white male-owned business, stated also that he had good experiences utilizing DBEs in the private sector, and that using them in the private sector was "probably a little less restrictive" (because there are no percentage requirements or DBE goals).

Interviewee #CT34, a white male-owned business, could not recall an instance where he did not use a DBE in the private sector, and that the DBEs that he uses regularly would in any case be among the first choices for the work they do for him. He did say, however, that with respect to soliciting bids from and utilizing DBEs in the private sector, "[i]t's just a different consideration" because "there's just not quite the same imperative when you're doing private sector work."

Interviewee #CT46, an Asian American male-owned business, said that private sector contracts "hardly ever ask you for a DBE requirement." Interviewee #CT65, a white male-owned business, has utilized or worked with a DBE in the private sector. According to Interviewee #CT11, Native American male-owned business, the company does not use DBEs when it is a prime in private contracts — the company pretty much handles everything in house.

CATA #1, an Asian American trade association, said that he had had good experiences soliciting bids from and working with other DBEs on Caltrans and other jobs. He said that, because of good networking, he had no problem finding DBEs, and he mentioned a current contract with a public agency (the Metropolitan Water District) where his firm is listed as the prime and three others as subcontractors. According to CATA #1, a "very very low percentage" of jobs that are bid are landed, and that getting private sector jobs depends heavily on whether a DBE program is looked upon as merely lip service or a real commitment. He identified one utility company that was good about hiring DBEs, but he said that most other utilities and defense contractors were not.

**Some interviewees offered experiences with DBEs but did not specify whether the experience was in the public or private sector.** When asked about his experience working with DBEs, Interviewee #CT34, a white male-owned business, stated, "I wouldn't distinguish my experience with the DBEs from any other subcontractor-consultants that I've ever used." He said that this was true of his experience using DBEs on work for Caltrans, other public sector work, and private sector work.

Interviewee #CT50, a white male-owned business, stated that he has worked with one WBE, and his experience has been good. Interviewee #CT51, a Hispanic male-owned business, indicated that the company's experiences using DBE subcontractors on projects (be they in the public or private sector) were no different than those with non-DBE subcontractors.

Interviewee #CT67, a white female-owned business, does not subcontract out any work. Interviewee #CT67 said that, though she was not sure how often prime contractors are looking for a firm like hers to do conversions to CAD, prime contractors still keep a lot of work in house, that subcontracting work is all about positioning as a small business and how primes look at small businesses, and that it is important for her, as a small business owner, to see that the DBE program is not abolished.

Interviewee #CT69, a white male-owned business, never personally hired a DBE. But, Interviewee #CT69 has had experience with DBEs in that he has had to "clean up" a lot of their work. He said some of the DBEs have had to send two people for projects for which he would only send one. Interviewee #CT69 also worked with prime DBEs, but the problems tend to be with subcontractor DBEs.

Interviewee #CT76, a white male-owned business, stated that he utilizes the same subcontractors each time. Some of those subcontractors are DBEs, and while he might have initially used them because he was trying to meet some DBE requirement, he continues to use them because they do good work. Interviewee #CT76 works "within the family," meaning he only uses those companies with which he has a good working relationship and knows will get the job done — regardless of whether they are certified.

Interviewee #CT7, a white female-owned business, stated that their experiences using DBEs in the private sector and on non-Caltrans public sector work were the same as those using DBEs on Caltrans projects. Interviewee #CT7 stated also that they have no problems finding DBEs for private sector and non-Caltrans public sector work, since they use the Caltrans list to locate DBE firms no matter who is issuing the contract.

Interviewee #CT11, a Native American male-owned business, recounted that the company's experience using other DBEs has been "very good." The company has built relationships with some smaller firms that are very responsive and who understand the Caltrans process, forms, and all of things that must be in a proposal.

Interviewee #CT31, an African American female-owned business, said that his company uses "anyone that has the capabilities" but noted that, though there are not that many DBE firms out there, the company "whenever possible . . . tr[ies] to promote utilization of WMBEs."

According to Interviewee #CT46, an Asian American male-owned business, some of the company's subcontractors are MBEs and WBEs, but "[i]t all depends on what job . . . ."

A non-DBE engineering firm, stated: "there seems to be a shortage of DBE certified firms for most service areas. We have found on many occasions that there are simply no DBE firms or no DBE firms available. We feel that including DBEs on our team even in non-required situations not only assists in promoting diversity, but quite frankly increases our chances of winning those projects that we would like to be working on. Obviously, the lack of these special firms creates a number of issues." (Written testimony submitted 4/16/07).

### 3. Differences in utilizing DBEs in the public and private sectors

**Some subcontractor interviewees reported that different prime contractors used them in the private sector as used them in the public sector.** CATA #10, an Asian American trade association, stated the same prime contractors do not necessarily use the same subcontractors in the private sector as they do in the public sector unless they have a long relationship "because they only were hired because they had to meet the goal." Otherwise, "in our business, it is the good ol' boy network." Some prime firms will use a member firm in the public sector because they are DBE or minority or have a good reputation but then will not use them in the private sector. He stated this happens "most of the time." He stated in particular after Proposition 209 and after implementation of the race-neutral program this situation is more noticeable.

CATA #1, an Asian American trade association, and CATA #3, a Hispanic trade association, stated that there was no cross-over between the primes that use his company as a subcontractor in the public sector and those that do so in the private sector, and that there is very little, if any, of this cross-over between the prime contractors that subcontract work to the Association's members.

Interviewee #CT65, a white male-owned business, does not use the same subcontractors in the private sector as in the public sector because the insurance requirements changed, and he was no longer able to afford the insurance.

Interviewee #CT11, a Native American male-owned business, stated that the company's experience in the private sector is that since the clients are not held to a bidding process, the clients value relationships more than anything else. In his experience, there has been no overlap between the primes that use the company in the public sector versus the primes that use the company in the private sector. Interviewee #CT11 explains that in the private sector, the primes like to keep most of the work in-house and there is no effort to use DBEs.

**Many stated that prime contractors tend to specialize in either public or private sector work.** According to Interviewee #CT33, a Hispanic female-owned business, the prime contractors that use their companies in the public sector do not use it in the private sector because they are a "different group of people." Interviewee #CT33 said that most of the prime contractors for whom she works on public sector projects "don't even do private work."

Interviewee #CT48, an Asian American male-owned business, indicated that the company did not use the same subcontractors in the public and private sectors because these were "completely different areas." According to Interviewee #CT65, most of the contractors performing public works jobs do not do private work – he does not think that he has ever run into one (at least with Caltrans).

According to Interviewee #CT79, an African American male-owned business, prime contractors who use him in the private sector are different than the primes who use him in the public sector. Interviewee #CT81, a Hispanic male-owned business, said the people he works with on public projects do not perform private work.

Interviewee #CT48, an Asian American male-owned business, stated that the prime contractors that use his company in the public sector do not use it in the private sector, and that his company had not attempted to obtain private sector work from a prime contractor that used his company in the public sector. Interviewee #CT48 stated that the company's private sector work is risk management work for the insurance industry (namely surveying and imaging) whereas its public sector work is more research and development, thus the company's public and private sector work is for different types of firms.

**Some interviewees reported using the same subcontractors in both sectors.** Interviewee #CT13, a Pakistani male-owned business, stated that his firm sometimes subcontracts out the drilling work on its projects, and that he uses the same subcontractors on both public and private sector projects. He was "personally not aware" of whether these firms were DBEs, stating "some maybe, some maybe not" and that "[i]t is not of concern to me." Interviewee #CT13 stated further that he did not have to contact DBE firms since his firm is a DBE, and therefore itself satisfies DBE goals or requirements on Caltrans and other projects, and that "being a DBE I wouldn't be hunting a DBE firm."

**Some DBE firms reported that the same prime contractors who used them in the public sector also used them in the private sector.** Interviewee #CT68, a white male-owned business, and Interviewee #CT62, a white male-owned business, stated that the same contractors for whom they do work as a subcontractor in the public sector also use their firms for private sector work. Interviewee #CT49, an African American male-owned business, stated that his company uses the same subcontractors, which he said were both MBEs and WBEs, in both the public and private sectors, and that these subcontractors are used for electrical, street lighting, concrete (curbs and gutters), and striping work.

Interviewee #CT46, an Asian American male-owned business, stated that the company uses subcontractors for fiber optics and low voltage communication work, and that it "more or less" uses the same subcontractors for this work in both the public and private sectors.

Interviewee #CT13, a Pakistani male-owned business, indicated that the same prime contractors that use his firm as a subcontractor in the public sector are not the same ones that use his firm as a subcontractor in the private sector, and that there are primes for whom his firm works for often, though "not as a DBE." According to Interviewee #CT13, he has a "very long term relationship" with these primes, they are "very happy" with his work, and "any time there is a project where they need geotechnical engineering service[s] they put me on the team whether there's a DBE requirement or not."

Interviewee #CT10, an African American male-owned business stated that "some" of the prime contractors that use his company in the public sector also use them in the private sector.

Interviewee #CT31, an African American female-owned business, stated that the prime contractors that use the company in the public sector also use it for work in the private sector, since the scope of the work is "almost identical" and the same civil engineers who work for Caltrans and other agencies also contract for work with private land developers. Interviewee #CT34, a white male-owned

business, stated that the same prime contractors that use the company as a subcontractor in the public sector also use them in the private sector. Interviewee #CT34 said that the jobs on which they work as a subcontractor are generally more narrow in scope (e.g., a biological survey or air quality and noise study) than when they work as a prime (e.g., as the overall or coordinating environmental consultant).

**Some subcontractors stated that they received private sector work after working for the prime in the public sector.** Interviewee #CT39, a Hispanic male-owned business, stated that the small amount of work that the company does in the private sector is for the same prime contractors for whom it works in the public sector. According to Interviewee #CT39, these jobs usually come about when the company is working for a prime contractor on a public sector job, another "little job" that is "usually very small" comes up, and the prime contractor asks them to do this job as well. Interviewee #CT39 summarized the relationship between these small private sector jobs and its public sector jobs as follows: "[I]f we don't get the public job, we're probably not going to get the private job."

Interviewee #CT46, an Asian American male-owned business, stated that the same prime contractors that use the company for public sector work also use the company in the private sector, mainly for street lighting and installing conduit systems for their utilities. Interviewee #CT46 indicated that the price range for these private sector contracts was the same as the price range of its contracts for the same work in the public sector.

Interviewee #CT51, a Hispanic male-owned business, indicated that the firms that use the company as a subcontractor in the public sector also use it in the private sector, and that once his company gets the chance to work for a prime contractor and demonstrate its abilities, the relationship continues for the prime contractor's work in both sectors. Interviewee #CT51 said that "it goes both ways."

Interviewee #CT65, a white male-owned business, noted that, with regard to the school district projects in which his company has engaged, those public contractors have used him in the private sector.

Interviewee #CT66, a white male-owned business reported that the subcontractors for whom he works use him in both the private and public sectors. Interviewee #CT66 said that he "vary rarely" gave out work to other firms and that we he did so, he did so on a limited basis with close friends who own trucks.

CATA #2, an African American trade association, stated that he had never looked for (and thus has never seen) any cross-over between the firms that use the Association's members for subcontracting in the public and private sectors but that he was "quite sure that [cross-over] happens." He noted that there are no DBE goals on private sector projects and said that his company subcontracts out only public sector work. CATA #2 said that the Association's members use the same subcontractors in both sectors "all the time." According to CATA #2, once a marriage between firms is made, it stays to together, and the businesses support each other in both sectors.

Interviewee #CT30, an Asian American male-owned firm, stated that while logic would suggest that prime contractors would use DBEs in the private projects after having worked on projects with the DBE in public projects, practically speaking, he does not believe that it happens. He states that the

prime might have a whole plethora of subcontractors to pick from and in the private sector most of it comes down to price.

**Some prime contractors reported using the same subcontractors in both the public and private sectors.** Interviewee #CT7, a white female-owned firm, stated that the company uses the same subcontractors for both its private and public sector work. The company subcontracts out work for aerial mapping, speed billing, traffic counts, and some architectural work, including with DBE firms.

Interviewee #CT1, a Native American male-owned business, stated that he also uses the same subcontractors in the private sector as he does in the public sector. When he utilizes subcontractors, it is for specialty testing like for pesticides and radioactivity. According to Interviewee #CT1, these are generally not DBEs or M/WBEs.

Interviewee #CT10, an African American male-owned business, relayed that his company uses the same subcontractors in the private and public sector. Interviewee #CT10 said that most of the subcontractors that the company uses on public sector projects are DBEs, but that "we don't use them [DBE subcontractors] all the time" on private sector jobs.

Interviewee #CT17, a white male-owned business, stated that the company does use the same subcontractors in the private and public sector, mainly for subcontracting surveying work Interviewee #CT17 also stated that though the company "sometimes ha[s] a call for DBEs" in the private sector, this happens "very rarely" since "it's mostly in the public [sector] if we use them at all." The firm has used DBEs on public sector work for the Metropolitan Water District, the Eastern Municipal Water District, and other agencies.

Interviewee #CT31, an African American female-owned business, stated that it performed most of its work in-house, but occasionally uses subcontractors for potholing for both its public sector and private sector work. Interviewee #CT32, an Asian American female-owned business, said that her firm uses the same subcontractors in the public and private sectors, and that these subcontractors are local DBE firms to whom she subcontracts out environmental work. Interviewee #CT44, a Middle-Eastern male-owned business, also uses the same subcontractors in the private sector that he does in the public sector, but doesn't know if any of them are certified as a DBE. Interviewee #CT44 subcontracts traffic light work, landscaping, and other small projects.

Interviewee #CT33, a Hispanic female-owned business, said that when her firm is the prime contractor, it tends to use the same subcontractors, but that "it varies." She said that some of the subcontractors are DBE firms but noted that she does not need to use DBE firms to satisfy a DBE goal on a project. Interviewee #CT33 stated that "all else being equal, [she] will choose the WBE and/or MBE firms" but that if a particular firm has experience that will help her company get the job, she will use them "regardless of whether they're WBE or MBE."

Interviewee #CT34, a white male-owned business, stated that the company uses the same subcontractors in the private sector that it uses in the public sector, and that these subcontractors usually are specialty firms. Interviewee #CT34 said that some of these firms are DBEs on specifically subcontracts that the company uses for endangered species surveys, geotechnical work, public participation, landscape architect, and biological work. Interviewee #CT45, a white male-owned business stated that "in general," he uses the same subcontractors in the private sector as he does in the public sector. With respect to whether he has attempted to use DBE/MBE/WBE subcontractors

in the private sector that he used in the public sector, Interviewee #CT45 stated that if they are the low bidder, he will use them.

Interviewee #CT45 stated that everyone has to follow the rules. Interviewee #CT45 noted that "everyone has a perception that DBEs come along and we have to foster them to bid in those situations they can't survive." Interviewee #CT45 stated "Caltrans gives no leniency after you get the job, they don't care if the guy quits the job, Caltrans said we have rules if you have to replace the subcontractors we don't care if it's a DBE. When subcontractors go down it is a problem to the [general contractor]."

Interviewee #CT51, a Hispanic male-owned company, stated his company uses the same group of suppliers and subcontractors that it likes working with in both the public and private sectors for concrete structures and hot-tapping work, as well as for trucking, landscaping, and sweeping. Interviewee #CT51 also said that the company "do[es] not care if the guy is a minority or not a minority or disadvantaged or not disadvantaged" but instead cares if the subcontractor can do a good job and meet the criteria of the specifications, and that the company wants to help minorities "in every way [it] can" and "prefer[s] to use DBEs or . . . veterans . . ." so long as they are going to do a good job and help the company meet project requirements. Interviewee #CT51 also stated that though the company generally uses the same subcontractors, it was open to developing and had developed relationships with new subcontractors and suppliers.

Interviewee #CT68, a white male-owned business, typically uses the same subcontractors in the public and private sectors, and it subcontracts out work to botanists, biologists, irrigation designers, and lighting engineers. Interviewee #CT68 said that the firms he uses as subcontractors are local ones, including a WBE that he used "all the time," but which was no longer in business.

Interviewee #CT73, a white male-owned business, noted that if he worked in the public sector, he would use the same subcontractors there as he does in the private sector. These subcontractors probably are not DBEs. He subcontractors out back-hoe services, concrete cutting services and equipment rental.

**Some DBE firms reported that various prime contractors only used them on projects where there was a DBE requirement.** Interviewee #CT31, an African American female-owned business, said that "even if we work with that firm consistently in the private sector they will not call us unless there is a specific reason to do so if it is a Caltrans project[]" and stated further that "if Caltrans does not enforce or pursue utilization of WMBEs and specifically call for professionals in our area of expertise, the 'civils' [civil engineering prime contractors] are not going to call us up. I do not care how many projects we work with them [on] in the private sector, it is not going to happen."

CATA #1, an Asian American trade association, said that unless there is a DBE requirement (i.e., public sector), prime contractors will do in-house all the work they can and will use DBE firms only if these firms can provide services that the big prime contractors cannot do themselves. CATA #3, a Hispanic trade association, said that where there is no DBE goal (i.e., the private sector), prime contractors do not "bring [DBE firms] into their fold of business," and that prime contractors will generally not use DBE firms for subcontracting where there is no requirement to do so.

Interviewee #CT13, a Pakistani male-owned business, noted that if the DBE requirement is there, . . . [it is] satisfied . . . . That's the only impact it [DBE certification] has made on my business. The

primes who had been working with me the last twelve [or] thirteen years do not have to go to somebody else to satisfy DBE requirements. That's the only difference it can make."

Interviewee #CT9, a white male-owned business stated that his division uses the same subcontractors in the private sector that it uses in the public sector, and that most subcontractors were selected because of their qualifications and the need to comply with DBE "set-aside" requirements.

Interviewee #CT34, a white male-owned business, acknowledged that the company "consciously" uses DBE firms in the public sector because it helps them meet DBE goals and estimated that about twenty percent (20 percent) of the company's public sector work is subcontracted to DBEs. Interviewee #CT34 summarized the firm's DBE utilization practices as follows: "Well, to be truthful, I would say we are more conscious of . . . When we're doing private sector work, we probably are most focused on which subcontractor-consultants . . . we've had the best results with in the past. In the public sector, we're always conscious of the need to meet the various goals of the public agency. And I'm not saying those two objectives are mutually exclusive. It's just that there are times when, if you absolutely had your druthers, you might use one subcontractor over another, and that could potentially be at the expense of a DBE. And if you were working for a public sector client, it's conceivable that you might have made a different decision."

Interviewee #CT7 stated that they try to get private sector work from prime contractors that use them in the public sector but that they have not been successful, as prime contractors contact them only when they need to meet a DBE goal. According to Interviewee #CT7, there is no incentive for a project manager at a prime contractor to contract out work to them or other DBE firms in the private sector because project managers are rewarded and compensated based on how much work (and money) they can bring in to their firms.

Interviewee #CT7 felt that whether or not their firm actually got hired to work as a subcontractor on Caltrans and other public sector jobs depended on whether the prime contractor had satisfied the minimal DBE goal by using other DBE subcontractors. If the prime had done so, then their firm did not get the job, unless "they [the primes] need help." Interviewee #CT7 identified as an issue that in these situations where primes need immediate help, it is difficult for small DBE firms to provide the necessary personnel and equipment "with no advanced warning that this [work] was coming up."

CATA #10, an Asian American trade association, stated that, in many cases, if there is no requirement, a prime will not use a DBE firm. CATA #10 does not have knowledge of a prime refusing to work with a DBE because it is a DBE. On a professional service contract, they will assemble a team, and the larger firm will not negotiate the price until they are awarded the contract. In order to assemble a team, a prime will ask for information from a subcontractor as "window-dressing" because the team is already assembled; they do not want it to get back to the public agency that the big firms are not "cooperating." Many times they won't do anything once they receive the information from the smaller firm.

**Some DBEs stated that they are used even when there is no DBE requirement.** Interviewee #CT1, a Native American male-owned firm, stated that in the past five years, he has had two three-year contracts as a subcontractor on Caltrans projects at a price of about $100,000.00 per year. He stated that these contracts did not have a DBE goal, and that he did not receive the contracts because he was a DBE.

Interviewee #CT32, an Asian American female-owned business, indicated that the prime contractors who use her firm as a subcontractor in the public sector (which is usually for the environmental portion of construction projects) do not do so in the private sector. Interviewee #CT32 stated that she had not worked for any prime contractors in the private sector. According to Interviewee #CT32, "in the private sector there's no need to subcontract to DBEs or small businesses. There's absolutely zero incentive for large businesses to subcontract out because the private sectors do not expect that."

Interviewee #CT9, a white male-owned business, relayed that his division wants to work with people with whom it has worked in the past, and who can deliver and meet the firm's needs. His division uses DBE subcontractors in the private sector (where there is no DBE goal or requirement) if it thinks that these firms are good ones.

Interviewee #CT68, a white male-owned business, said that because no agency ever required that he uses a DBE subcontractor, it was not something that he considered in his selection criteria.

#### 4. Refusal to use DBEs

**No interviewee stated that they had refused to solicit or use a DBE based on race, ethnicity, or gender.** Some interviewees stated that they refused to work with particular DBE firms due to issues with work quality. Interviewee #CT40, a white male-owned business, stated that she had never refused to work with a DBE except for one company against whom her company filed a claim for failure to complete the work on a Caltrans project. Although Interviewee #CT65, a white male-owned business, stated that there was one time when the company refused to work with a DBE, "they worked it out."

According to Interviewee #CT11, a Native American male-owned firm, the company has declined to work with some DBEs, but only as a part of the normal teaming selection process.

**No DBE stated that another firm had refused to work with them based on race ethnicity or gender.** However, some DBE firms felt that prime contractors were not genuinely interested in using DBEs. CATA #1, an Asian American trade association, stated that he had never refused to work with a DBE firm. When asked if a prime contractor had ever refused to work with his business or his members' businesses because they are DBEs, CATA #1 said that the refusal is "very subtle" and that the discrimination is not on the surface but rather is buried deeply in peoples' minds. And, said CATA #1, people show this discrimination through their actions (even though they do not outright say they do not want to work with a DBE firm).

Interviewee #CT8, a Hispanic male-owned business, noted that a prime contractor had never refused to work with him because it is a DBE, and that the company gets contacted "quite a bit" by prime contractors soliciting bids on Caltrans projects. This interviewee stated further that, "basically all the do is meet their good faith efforts and never have any intentions of using [the company]."

Interviewee #CT31, an African American female-owned business, recounted an experience that happened a number of years ago when a South African firm had awarded a private sector contract and his company had been hired and put on the project team. The company as later fired because the owner of the South African firm did not want him working on the project. Interviewee #CT31 went on to say that "it has been really though breaking into the professional arena[,]" and noted that, "the majority of the time you are not going to see people of color in these meetings, whether it is on a

public sector or a private sector project . . . ." Interviewee #CT33, a Hispanic female-owned business, stated that, to her knowledge, a prime had never refused to work with her because her firm is DBE, but she noted that, "[She doesn't] know what [firms] decide internally." Interviewee #CT39, a Hispanicmale-owned business, did not think that another firm had outright and overtly refused to work with the company because it is a DBE, but he said that the company does "get the feeling that if it's not a DBE requirement, . . . they're [other companies] not going to seek [them] out."

Interviewee #CT46, an Asian American male-owned business, stated that his firm had never refused to work with a DBE. Neither had a prime contractor ever refused to work with his firm because it is a DBE firm. In fact, said Interviewee #CT46, "[u]sually [it's] the other way around [because] people really want you to bid the work."

Interviewee #CT67, a white female-owned business, shared her impression that, on the whole, prime contractors' efforts to utilize DBE firms now end at the good faith efforts stage, and primes keep work in-house to the maximum extent possible.

Interviewee #CT81, a Hispanic male-owned business, stated that a prime has never refused to work with him because he was a DBE. In fact, once they know you are a DBE and that you do quality work, "primes go nuts over you." Interviewee #CT81 often gets calls from a prime requesting a bid on private sector work; gets these calls by referrals, the average price of these contracts is $30,000.00; he usually gets the job.

Interviewee #CT82, a white male-owned business, does not think he ever used any DBEs and tends to use the same subcontractors each time.

Interviewee #CT7, a white female-owned business, stated that the company had never refused to work with a DBE firm and that no one, so far as they were aware, had ever refused to work with them because they are a DBE firm. Interviewee #CT7 stated that the philosophy of the larger firms was to do as much work in-house as possible, and Interviewee #CT7 stated that "if there's no DBE goal we don't get a call" and that primes simply "want to hit [whatever] the minimal DBE goal is." Thus, according to Interviewee #CT7, "on the private [side] they just don't hire us."

Interviewee #CT11, a Native American male-owned firm, stated the company has not been refused work because they are a DBE, although he has had the experience of having been put on a team because they were a DBE and then they were not used in the actual project work. Interviewee #CT11 noticed that with the larger firms, they believe that certain firms have either political contacts, certain experience to help them win the project as a prime, but once they get it because they have to report to their directors, a lot of times they will drop those firms and keep the work in-house so they can improve their bottom line.

**Experiences regarding DBE utilization after May 2006**

**Some firms reported a decline in DBE participation since Caltrans moved to a race gender neutral implementation of the DBE Program.** According to Interviewee #CT7, a white female-owned business, there has been a "great decrease" in the number and frequency of calls the company has received since May 2006. He said that this decrease has impacted the number of jobs and amount of work that the company has been doing for Caltrans. Interviewee #CT9, a white male-owned business, recognized that he had not been pursuing that many contracts with Caltrans since May

2006, but that he was "glad to see it [Caltrans' DBE contract goals] suspended." He stated also that when the DBE program was in place, he often "scrambled to find . . . the necessary quotas or set asides for various functions."

According to Interviewee #CT7, the company's phone used to ring "off the hook" with calls from prime contractors requesting bids from them, but now that "there's no DBE participation [goal], the phone doesn't ring." He stated further that since Caltrans ceased using the DBE participation goals, "our phones have stopped ringing on the DBE issue" and "[w]e don't get the calls anymore." The only projects for which the company still gets calls from prime contractors have been federal projects where there is a goal for small businesses and/or businesses located in HUBZones.

According to Interviewee #CT32, an Asian American female-owned business, the company still receives the same two or three calls a year that it received before Caltrans suspended its DBE program, but she referred to the DBE solicitation process as "just a name sake" and said, "They just send these forms over that we have to fill out and then turn back in. Then we never hear back from them."

Interviewee #CT39, a Hispanic male-owned business, stated that, as a result of Caltrans stopping the use of participation goals and the decrease in solicitations from prime contractors, the company has had to be "very proactive [in] trying to locate work." He said that the company had received more work because of its being more active in seeking it, but that this work carried a lower profit margin and that the firm's bottom line had suffered as a result. Interviewee #CT39 also thought that the company had experienced a decrease in calls asking them to bid on projects for other governments and government agencies because they, like Caltrans, had stopped using DBE participation goals. He stated that the company has experienced an overall decline in the number and frequency of calls they receive from prime contractors soliciting bids. Although the company did not always get the jobs, and sometimes did not even bid on the jobs for which it was solicited, Interviewee #CT39 feels that the DBE program was good if for no other reason than it allowed DBE firms to get their names out to prime contractors.

According to Interviewee #CT46, an Asian American male-owned business, the company would get contacted "at least once a week" to bid on Caltrans projects, but the number of requests for MBEs to bid on Caltrans work "has gone down somewhat . . . probably a lot in the last year or two . . . ."

Interviewee #CT67, a white female-owned business, stated the DBE program is a "vital gateway" to prime contractors and thus to work. She added that it took a lot of time and work to get the DBE program established, and "to see it no longer [be] part of good faith . . ." is indicative of the way the industry to going, and she said that "it's frightening."

Interviewee #CT17, a white male-owned business, stated further that his company's practices with respect to soliciting bids from DBEs has not changed in the past year, but the firm has not tried to bid a project with Caltrans since the DBE program was suspended. According to Interviewee #CT17, "DBE isn't the problem . . . Caltrans' hiring practices is [sic] really the problem, in my opinion."

Interviewee #CT69, a white male-owned business, indicated that up until two years ago, primes did try to use DBEs. But there were so many problems with DBEs not being able to complete the work in a satisfactory manner that primes stopped trying to utilize DBEs. Now, the primes just want to use subcontractors who can get the job done.

With respect to his experience with DBEs, Interviewee #CT45, a white male-owned business, stated there are "very few to solicit." He stated that "[it] has not been a requirement in 2 years. [It] used to be you couldn't get job if didn't have 20 percent minority." He stated that contractors didn't take the low bidder and sometimes had to take the high bidder to meet the goal. Interviewee #CT45 stated that now they can take the low bidder "rightfully the way it should be."

According to CATA #1, an Asian American trade association, his business is "very very rare[ly]" solicited to bid on Caltrans contracts. He said that, whether the work is for Caltrans or anyone else (both public and private sector), whether he and others are solicited for bids depends on whether they have a relationship with the prime contractors. He also said that the larger prime contractors often do not provide opportunities for these relationships to develop and that the impetus has to come from elsewhere, and he called Caltrans' mentor/protégé program a "first step" in this area. CATA #1 stated that, since Caltrans had suspended its DBE program, requests by prime contractors for bids had "decreased substantially," and that "race neutral" means "they don't have to use you . . . they can use somebody else."

CATA #2, an African American trade association, stated that although his company had not worked under a prime contractor on a Caltrans job since Proposition 209 was passed, generally the frequency with which the Association's members received solicitations to bid on Caltrans projects did not change pre- and post-209. Rather, said CATA #2, the big change in solicitation frequency occurred with local government jobs. However, CATA #2 also said that DBE goals have never been met on Caltrans projects in the post-209 era.

Generally, said CATA #3, a Hispanic trade association, "[t]he fact that you're a DBE doesn't make you any better or any worse," but if a DBE firm has been around for a long time, it is "probably more sophisticated" because it has a lot of experience dealing with public agencies and government bureaucracy. CATA #3 stated that in the 1990s there were more firms to choose from if one was looking for DBE firms to bid on Caltrans work. Now, he said, it is harder to put teams together, in part due to the passage of Proposition 209 and in part due to economics since Caltrans has not in recent years received as much funding as it did in the past.

A white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified "when there are no goals, I can tell you that the fax machines stop, the phones stop, and there is no solicitation. After 209, it was just like night and day. The next day I got not faxes, the phone didn't ring, asking for my bid. It was remarkable . . . I used to get maybe 20 faxes a day … now I might get three a week." She still does 80 percent of her work in the public sector but stated "we have to really scrounge to find work." (P.H. San Diego, 3/22/07).

A female-owned consulting firm stated "large primes regularly use our company … to join their team because we are a certified DBE firm, and I have no doubt that many perhaps most of those large primes would make no effort to include small businesses without that subcontractor requirement … it's definitely dropped off in the last year." (P.H. San Diego, 3/22/07).

An African American certified female consulting firm stated at a public hearing "my firm was certified in 1990 and I sincerely believe that I would not have survived in business for the last 16 years had it not been for the existence of the DBE programs and others developed to address the current affects of past discrimination and the more subtle forms that remain ever present today … I

believe that San Diego is a poster child for the repeal of Proposition 209 … Many firms have simply gone out of business, particularly those in the construction industry." (P.H. San Diego, 3/22/07).

An Asian American DBE female-owned consulting firm testified at a public hearing that since the suspension of the goals "it's very difficult for us to get contract, to get a subcontract." Before the goals were suspended they were able to get on teams with the primes. Now the primes do not include them. (P.H. Irvine, 3/29/07).

A DBE information technology consulting firm who testified at a public hearing stated that she does ninety-eight percent (98 percent) of her work in the public sector. She has noticed a gradual decline since the suspension of the goals, but due to her good track record she still receives solicitations. (P.H. Los Angeles, 3/29/07).

A certified DBE, submitting written testimony in connection with the public hearings, stated "The elimination of the race-conscious elements of the Caltrans DBE program will have a severe adverse impact on the availability of opportunities for all M/W/DBE firms to pursue and obtain public sector contracts." (Written testimony submitted 4/12/07).

An "ex-DBE" contractor who testified at a public hearing in San Bernardino stated that he was "forced out of business through the discrimination process of the non-DBE giants of the industry." He explained that he used to receive ample work from the large primes "during 1985 to 1995." But after that time the program became less effective. Before "the reason that these contractors would call us is to meet their DBE requirements … Caltrans or the prime contractors found a way to honor those guidelines." He stated that now that the DBE requirements are no longer in place, DBEs are not utilized. He went bankrupt in 2000. (P. H. San Bernardino, 3/20/07).

## IV. Consortium Bidding Process

### A. Consortium anecdotes regarding the bidding process

The following anecdotes regarding the bidding process were obtained from interviews that the study team conducted in connection with BBC's 2009 Consortium study.

**Experiences with the Consortium bidding process**

**Some interviewees reported positive experiences with the Consortium bidding process. (Interviewees #4, 10, 13, 15, 16, 17, 22, 28, 32, 36, 38, 42, 48, 52, 55, 58).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has been involved with some teams that bid on Consortium work and as a subcontractor, he provided proposals to the prime contractor for Consortium work. None of these teams, however, won any of the projects. As the subcontractor he was not very involved in the bidding process. He explained that the prime would say "this is what we want from you" in terms of scope of work, "give us a price," or the prime would sometimes base its decision strictly on qualifications and the prime might ask for a resume and company profile. The last time that he participated in the Consortium bidding process was about five (5) years ago. Interviewee #4 stated that it was a straightforward process. The prime told him what was needed and Interviewee #4 provided it. Interviewee #4 could not recall the names of any projects that he submitted information for a bid. Interviewee #4 stated that he has never bid on a project as a prime contractor because there

are no opportunities for geotechnical prime contractors; project owners typically look for civil engineers or architects to work as prime contractors.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that Orange County has the best bidding process. Interviewee #10 explained Orange County places qualified firms on the "audit bench" and goes through the list in order to complete task orders. Interviewee #10 stated that the initial process was "not easy" because some of the criteria is not understandable and the entities are asking for more than the work entails. Interviewee #10 explained that OCTA has several firms that they place on the audit bench; once your firm is selected to be on the audit bench, the entity will issue task orders, and then select firms off of the bench. Interviewee #10 stated that with most entities, once your firm is on the bench, the entity will require the firm to resubmit a task order proposal for each task order issued. She stated that if you are not selected there is no feedback and the selection criteria are unclear. She stated that often the same firms are picked repeatedly and because their firm is newer to the process, they receive less work than the older firms. Interviewee #10 stated that in contrast, Orange County's process seems more equitable inasmuch as they simply go down a list to pick their audit firm.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the Consortium bidding process is "proper." He stated that there are some "F.A.R." requirements that he has to adhere to and some requirements are more strict than others but overall the process is "reasonable."

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that the bidding process is generally not difficult, but noted that his company generally shies away from lump sum payment jobs when this information is discovered during bidding.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, had a "very good" experience bidding on projects with the Consortium entities. Interviewee #16 noted that L.A. County MTA is the best, and has been great to work with, but that bidding for Metrolink is tougher because "everything is outsourced to large companies."

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the bidding process consists of standard proposal writing.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her experience with the Consortium bidding process has been pretty straightforward — it involves computing direct labor rates and fees, using multipliers, and calculating overhead and general and administrative expenses. She stated that the Consortium bidding process works fine.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, reported having a good experience with the Consortium's bidding process. He stated that he has been both a participant and a player. He stated that there was a lot of work in the early 1990s and up until 2000, especially during the construction of the different lines.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, believed the Consortium's bidding process was okay; he noted that he had just responded to an RFP.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she has had a very good experience with the Consortium bidding process. She basically provides her business information in response to an RFP that she finds out about.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that his experience with the Consortium bidding process has been "okay;" nothing stands out in his mind.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she has an ongoing project with the L.A. County MTA that she has submitted bids for and she believes that the L.A. County MTA is fair.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the MTA had a "great" bidding process.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, indicated that they get some contracts and not others, but it is all just a part of the bidding process.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, reported that the goal of his firm in participating in the bidding process is to provide the best value, and they do not get involved in a low bidding situation.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, identified two RFPs that they had gone after but were not selected for. He did not report any problems with the bidding process.

**Some interviewees reported negative experiences with the Consortium bidding process. (Interviewees #1, 3, 8, 11, 12, 15, 24, 25, 26, 27, 31, 37, 44, 47, 50, 51, 57, TA #1).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that the amount of paperwork involved in doing work with other non-Consortium agencies has discouraged him from pursuing work with the Consortium. He stated that he understands the reason behind requiring so much paperwork but most of it is inappropriate; he stated that they have been "soured" from pursuing work in the public sector.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, described the Consortium bidding process as follows: "They put out a RFP and you do your best to understand it and produce a bid that fits. There are always issues. You have to make a determination whether the job has already been given to someone and they are just going through the motions, which happens a lot." There are jobs that he qualified for and wanted, but he said he would not chase because he believed someone had an inside track on it.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that eight years ago he sat through a pre-proposal meeting at SANDAG but decided not to bid on the project because of the requirements. He attended another pre-proposal meeting one and a half years ago; the pre-proposal meeting was advertised in the San Diego Daily Transcript.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that the RFP process is "crazy hard." She stated that the process is very detailed and time-consuming. She statd that the process requires extensive documentation to the extent that she once had to break open her framed diploma as part of the process to respond to an RFP. Interviewee #11 also identified the Consortium's criteria for experience as a barrier or obstacle to pursing work. She stated that when she does not have the requisite experience, she tries to find a subcontractor to supplement the requirement. She stated that on an L.A. County MTA project, the subcontractor said they had the experience, but then she did not win the contract because the subcontractor was not in fact qualified.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has the perception that politics "is extremely hot" within some of the Consortium agencies. He explained that he believes prime contractors or teams who end up winning the contracts are the ones that have some political affiliations. He feels that member agencies of the Consortium are influenced in their selection of firms by more than what appears to be in the proposal.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that a barrier to doing business with the Consortium is the sheer dollar value of the projects. According to Interviewee #15, other cities and counties, in addition to Caltrans, tend to make contracts smaller so that more business, particularly smaller business, have a chance to get jobs.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that bidding with the Consortium is a process that can be taxing.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that the Consortium projects are so large that it puts smaller firms at a disadvantage.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the Consortium bidding process requires a lot of documentation for a bid but no guarantees that you will get selected. She also feels as though too much of her personal financial information is being provided to others.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that responding to RFPs and RFQs is a difficult process.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has been unsuccessful at receiving Consortium contracts. He feels that the system is skewed to exclude small businesses because of the detail in which the applications go as well as the required documents and financial history. He feels this information contributes to a case for them not to utilize the small businesses who can perform and do the work but are not eligible because of insurance or financing or bonding issues.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, perceives that there is no validity to the Consortium bidding process. He believes that deals for the most part have already been made when the bidding opportunities are made available to the public. He feels that it is not a fair bidding process.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he has not bid with the Consortium in a long time, and he did not like the

process. He believes that bidding is just an exercise that the Consortium makes you go through because they already know who they are going to utilize.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, reported perceiving the Consortium bidding process as very unfair. He stated that he went through the process to get certified so he is qualified and should have the opportunity to work and bid on contracts. He stated that he bids on contracts every year but the incumbent always gets the contract. He stated that they want him to be bonded but even if he incurs that cost, there is no guarantee that he will get the contract. He provided a recent example of a procurement that required his company to have twenty-five (25) employees (security guards) for a particular job. He stated that they would not allow him the opportunity to hire to capacity if he was subsequently selected. He stated that he had the capacity and capability to hire these employees on short notice if required, but that was not good enough for the procuring agency.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the Consortium bidding prices start too low which prices his company out of the competition before he can place what he believes to be a responsible bid to do the required work.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the Consortium bidding process is not organized at all. He reported feeling as though there should be more organization that would make the process run a lot smoother. Interviewee #51 also stated that the selection criteria utilized by the Consortium and other non-Consortium public agencies and in the private sector is a barrier to pursuing work.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that public sector work with the government in general is complicated. He stated that the Consortium's bidding process is no different; he described it as "cumbersome and lengthy."

TA #1, the President of the Latino Business Owners of America, stated that among the barriers or obstacles to pursuing work with the Consortium include the Consortium's lack of encouragement for DBEs to participate on projects. He stated that there is no sincere motivation to share public dollars. He said that most of his members choose not to participate in the Consortium bidding process because his members have been discouraged about the process. Members must divert attention away from other revenue producing activities and spend approximately two weeks working on a bid that they do not know they will win. Often times when members do not win projects after spending so much time on the bidding process they become discouraged and do not renew their certification; instead, they have chosen to work solely in the private sector.

**Some interviewees reported mixed experiences with the Consortium bidding process. (Interviewees: #14, 20, 45).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, identified both positive and negative aspects of the Consortium bidding process: he stated that it is positive dealing with winning accounts and maintaining them; he identified a negative as where the client (Consortium) attempts "to push in" people they know from other companies.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she is comfortable with the bidding process and is at ease after fifteen (15)

years in the business; it took a long time to get to this comfort level. She stated that there is a lot of paperwork and that it takes a long time to fill-out each questionnaire.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a consulting firm, bid on a Consortium project; she stated that the pre-bid portion was very good but the bid itself did not go so well. She stated that it was unfair because she felt the group who wrote the response to the RFP used her just to get the job.

**Some Interviewees reported limited or no experience with the Consortium bidding process. (Interviewees #1, 2, 5, 6, 7, 19, 29, 30, 34, 35, 39, 40, 41, 43, 46, 49, 54, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has not had any experience with the Consortium bidding process. He stated that you have to be pre-qualified to place on a short list and in order to get prequalified, you have to have some public sector experience. He stated that this deters him from going through the prequalification process because he has no experience with the public sector. Interviewee #2 stated that the experience requirement is the only thing that deters him from the prequalification process.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he has not submitted a bid or otherwise participated in the Consortium bidding process.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian-owned recycling and materials supplying company in the San Diego area, has never submitted a bid or quote for the Consortium's bidding process and has no experience regarding the Consortium bidding process.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company, could not provide much insight on the Consortium bidding process. He recalled that he may have bid on a Consortium project as a subcontractor for a solar installer for Los Angeles Transit but did not get the contract.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she had only limited experience with the Consortium's bidding process because her company "does not go after construction projects."

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that he operates as a subcontractor and does not have very much experience with the Consortium bidding process although he thought the process was "alright." He believes that having a DBE goal would make business much better.

TA #2, the President of the Black Contractor's Association, could not provide any specific information about the Consortium bidding process, but stated that often members do not get any work upon participating in the Caltrans bidding process. He stated that prime contractors use the DBEs to obtain the contract. In relation to the bidding process itself, he stated that there are no problems actually submitting a bid for those who know how to bid.

**Notification of opportunities to bid**

**Many interviewees stated they are adequately notified of opportunities to bid on jobs for the Consortium and identified multiple sources for this notification. (Interviewees: #3, 9, 12, 13, 17, 20, 21, 22, 23, 25, 26, 27, 32, 33, 34, 38, 42, 44, 45, 48, 49, 53, 54, 55, 57, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he is notified of opportunities to bid on Consortium jobs through pre-proposal meetings. He stated that many times there will be a pre-proposal meeting where the project owner says anyone interested in this project should show up at this location and time and we will do our best to explain what we could not put in writing and answer questions. The idea is that everyone listens to everyone's questions and learns. He stated that the pre-proposal meetings are advertised in the San Diego Daily Transcript (local business newspaper). He also stated that business owners can also look on the websites of the various entities which are members of the Consortium and see what jobs are there and upcoming proposals. The website provides information regarding the scope of work and due date.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he is adequately informed of opportunities to bid with the Consortium. He stated that notification is often direct or through the various listing services (Onvia and IMS). Interviewee #9 stated there is "usually not" a way to determine which prime contractors have expressed an interest in a contract. He stated that his firm has not felt singled out as having been denied the opportunity to submit a bid or a price quote.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the Consortium agencies do an excellent job of providing notice of bid opportunities. He stated that he receives notice via email and MTA uses regular mail. He stated that OCTA uses "CAMM NET" which is "excellent."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that OCTA used to have a system called "CAMM NET" to notify individuals of opportunities to bid but he did not know if they still utilized that system. He stated that L.A. County MTA used to mail out blue postcards notifying of opportunities to bid but they have stopped that process. Interviewee #13 was also aware of emails sent by SCAG.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, noted that she is adequately notified of opportunities to bid on Consortium jobs by website notification, vendor fairs, and lists based upon current relationships and team formation.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that they are adequately notified of opportunities to bid with the Consortium. She stated that they are increasingly solicited via email and they check the newspapers for projects and RFPs.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated she was "somewhat" adequately notified of opportunities to bid; the challenge is how the bids are written. She stated that they are notified of opportunities to

bid via email, and advertisements in the L.A. Sentinel and the L.A. Wave newspapers; both of these publications target African Americans.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she is adequately notified of opportunities to bid on consortium jobs. She stated that she finds procurements through advertisements by the contracts department, the L.A. County MTA website, and pre-bid meetings.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that they bid only on trucking jobs and they submit a bid when they receive a flyer. He stated that he is adequately notified of opportunities to submit bids in that they receive faxes all day long; he also sees opportunities advertised in the "blue book."

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he is adequately notified of opportunities to bid; he stated that he is registered with different agencies on their website ("AEC Leads"). He stated that he also receives emails with job listings.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she is adequately notified of opportunities to bid on Consortium projects. She stated that she is notified through email and always sees notices advertised through that media.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that they are notified of opportunities to bid through public channel websites and they use a lead service. He complained that it is not an open process even though it is supposed to be.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that it would be difficult to assess the adequacy of the Consortium's notification, since he does not know of any other process to which we can compare. But, he goes to the L.A. County MTA website and checks on procurement and he receives mail with opportunities and he responds to the mail also.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she is adequately notified of opportunities to bid and she usually sees projects advertised on the website.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she is adequately notified of opportunities to bid with the Consortium. She stated that she had just been notified via email of an opportunity to bid with OCTA.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he is adequately notified of opportunities to bid via advertisements in the newsletter and website of the Indian organization NCAIED.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she is adequately notified of opportunities to bid; she receives notification via email.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he is adequately notified of opportunities to bid. He stated that ordinarily he receives notifications via email; advertisements are posted in trade magazines and bulletin boards where he works.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she is adequately notified of opportunities to bid and receives general solicitations now; she used to receive more notifications. She has received notifications via fax and email and has seen advertisements on occasion in the newspapers.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he is adequately notified of opportunities to bid with the Consortium. He stated that he is notified via telephone and on L.A. County MTA's website; he has not seen bid opportunities advertised before.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that he is adequately notified of opportunities to bid on Consortium projects; he stated that he receives notification via telephone and regular mail but not through email. He indicated that he has not seen advertisements for work with the Consortium in his particular field.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, noted that he does not place bids but indicated that he is notified of opportunities to work with the Consortium through the receipt of telephone calls and advertisements in trade magazines and local newspapers.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that his firm has their own internal department whose responsibility it is to seek out new business. He stated that this department does not rely on outside information possibly coming their way but rather actively pursues business opportunities.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, reported that his firm is adequately notified of opportunities to bid and that it is handled through an internal department in their firm.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that they are adequately notified of opportunities to work with the Consortium and they are approached to work on such jobs.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that his firm is adequately notified of opportunities to bid on Consortium projects. He stated that they do not necessarily wait to be notified of opportunities but rather participate in a lot of networking which leads to a lot of work. He was not aware of advertisements for Consortium bidding opportunities because they do not use those methods.

**Other interviewees did not always feel they were adequately notified of opportunities to bid on work with the Consortium. (Interviewees: #2, 4, 7, 10, 11, 14, 15, 16, 18, 24, 28, 29, 31, 36, 37, 40, 43, 46, 47, 50, 51, 52, TA #1, 2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he is notified once in a while of opportunities to

bid on Consortium jobs. He stated that this is not adequate notification. He does explain, however, that this could be because he is not pre-qualified. When he receives notification it is usually through a public agency. For instance, a city may have a convention to orient and train DBEs and notify DBEs of projects going on.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that normally he receive notices of RFPs through email and also is notified of opportunities to submit a quote if a prime sends an RFP notifying Interviewee #4 that it is going after a particular project. Interviewee #4 stated, most of the time, the notification is too late. He explained, "the requests come in and you barely have one week to put stuff together and for a small business that is always a challenge."

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that contractors are not adequately notified of opportunities to bid on Consortium jobs. He stated that prime contractors obtain a list of subcontractors and send the subcontractors notices requesting a bid/price quote. He stated that the subcontractors often receive the information 24 hours before a bid is due and cannot compile the information.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that "sometimes it does not seem like" they are adequately notified of opportunities to bid with the Consortium. Interviewee #10 stated that they can go and see the work out there that would appear to require an audit, but it is not clear if it does in fact require an audit firm. Interviewee #10 stated that they may receive an email or a phone call notifying them about work.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she has only very short notice — approximately three weeks — in which to respond to an RFP. She suggested that the purpose of providing such short notice is to test the individual's ability to respond. She stated that in the past it has taken her three 3 full nights and three 3 full days to respond to an RFP.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he pays for a service to receive notice of opportunities to bid. He stated that they receive messages from Metrolink but those are the only two methods by which he receives notice of opportunities to bid. Interviewee #14 stated that in Orange County, it appears that there is a tendency to look only to DBEs within Orange County in terms of the companies that are notified of opportunities to bid and that ultimately win the account; Interviewee #14 stated that he feels that this is an unfair practice. Interviewee #14 stated that the reputation in the industry is that if you are in Orange County then you will win the account.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, thought that sometimes he was notified adequately of opportunities to bid, and that other times he is not notified. Interviewee #15 stated that he periodically checked the agencies' websites for bidding information.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, thinks that the company is adequately notified of opportunities to bid with L.A. County MTA, but not with Metrolink. "L.A. County MTA is the only [agency] that makes an actual effort to notify. Projects are not always posted."

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated that there are problems with the adequacy of notification for some of the Consortium entities. She noted that there were huge differences, for example, between the notifications that she receives from L.A.County MTA versus OCTA. She does not receive anything from L.A. County MTA.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she is not adequately notified of opportunities to bid with the Consortium. She stated that she learned of some opportunities through another individual in the business. She was not aware of any advertisement of Consortium bidding opportunities.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he is "probably not" adequately notified of bidding opportunities. He stated that he has seen notifications through the mail and construction related journals and green sheets.

Interviewee #29, an African American male-owned electrical contractor, has not received any notification of bid opportunities with the Consortium.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he is notified occasionally by calls from prime contractors who already have the contract. Sometimes he is notified a day or two 2 before a bid. It is not rare that he is notified on the day of the bid by a prime contractor. In this short time he has to obtain plans and decide if he wants to bid and if so then put a whole bid together in a day or two. He stated that this is not fair. He thinks it is "dumb" that he can be notified about a $5 million job in this short time before the bid is due, and he can only qualify for bonds maybe at $100,000. He stated the prime contractor is simply making a good faith effort and not a true attempt to utilize him and the services that he can provide. He is never notified by the L.A. County MTA directly about opportunities to submit a bid on a contract by phone, fax, e-mail, snail mail or any other kind of way.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she does not feel adequately notified of opportunities to bid on Consortium jobs. She stated that she is used to dealing with letters and faxes and is now having her staff look for email notices.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he finds out about opportunities to bid on Consortium jobs after the prime contractors find out, and by this time the deal is done because large prime contractors reach out for their contacts.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he is "absolutely not" adequately notified of opportunities to bid on Consortium projects. He stated that in the past he received notifications; he stated that he does not receive anything now (even email) and he does not see any advertisements.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, does not feel as though he is adequately notified of opportunities to bid with the Consortium; he noted that he had received some postcards and some advertisements in the newspaper.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he is not adequately notified of opportunities to bid with the Consortium although he noted that in the past he received notifications by mail and fax.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he is not adequately notified of opportunities to bid with the Consortium and was not aware of how subcontractors receive notification of bidding opportunities. He stated that he checks his email everyday and goes on the internet everyday too. He stated that he has never seen any bids advertised.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported that he does not feel as though he is adequately notified of opportunities to bid on Consortium projects. He stated that he is typically notified of opportunities on the Consortium's website. He stated that bid opportunities are hardly ever advertised but when they are he sees them in trade newspapers. He noted that when he is seen [by other contractors] at a pre-bid conference, the other competitors try to knock out his firm with relationships or pricing.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported that he does not feel adequately notified of opportunities to bid with the Consortium. He stated when he is notified, it is typically through a phone call; he has also seen advertisements in the newspaper.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that he is not adequately notified of opportunities to bid with the Consortium. He stated that they do not leave notification up to anyone else, but they find out the information themselves by searching or calling themselves. He stated that they have seen some projects advertised on a port website, and they have also received calls from colleagues.

TA #1, the President of the Latino Business Owners of America, stated that often members are notified late of opportunities to bid on Consortium jobs, but he believes this is not the problem. The problem is his members' belief that the program has no real credibility. He said program staff and/or prime contractors do not even try to staff projects with DBEs, but they simply say there is no availability. He stated that Consortium officials have not devised a system that encourages small business participation. Most members believe that it is simply a waste of time.

TA #2, the President of the Black Contractor's Association, did not think that members are adequately notified of opportunities to bid on Consortium jobs. He stated that others get "look aheads" which tell them what will happen in the next year. He, however, regularly receives late notice of the opportunity to submit a price quote to a prime. He stated that he often receives no notice until the 30 day bid period or 10 day period. Then, it takes a couple of days to get the information to his members and members have no time to bid.

**Knowledge of prime contractors' interest to bid**

**Several interviewees stated that there is no way to know which prime contractors have expressed interest in a particular RFP. (Interviewees #2, 8, 11, 13, 14, 20, 32, 36, 37, 40, 43, 47, 49, 51, 53, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that there is no way to know what prime contractors have expressed an interest

in a particular RFP so a subcontractor can contract the prime about submitting a price quote unless you are on the short list of pre-qualified businesses.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he is "marginally" notified of opportunities to bid on Consortium projects and that he does a lot of research himself. Interviewee #8 stated that there is typically no way to know what prime contractors have expressed interest in a Consortium project; other agencies advertise this information in the Daily Transcript.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she did not know whether there is a way to know which prime contractors have expressed interest in a given RFP.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that MTA has had networking opportunities in the past as between prime contractors and subcontractors, but it is inconsistent and he does not know when they choose to hold such an event and when they do not. He was not aware of opportunities offered by other organizations to ensure that subcontractors know which prime contractors have expressed interest in a particular project. Interviewee #13 stated he will go to the pre-bid session and look at the sign-in sheet and then call everybody. He stated that the best thing to do is to get on a team.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that there is no way to know what prime contractors have expressed an interest in a particular RFP so a subcontractor can contact the prime contractor to submit a price quote.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated there is no way to know what prime contractors have expressed an interest in a particular RFP unless the prime contractor has a website with his latest job information on it.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated he does not believe that there is a way to know for sure which prime contractors have expressed an interest in a particular RFP so a subcontractor can contact the prime about submitting a price quote. He believes that it is by "invitation only," and when he gets a call from a prime contractor he follows through on the RFP.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that there is no way to know which prime contractors have expressed interest in a bid, but he does wish that this information was accessible.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that there is no way to know which prime contractors have expressed an interest in a bid unless it comes up on his computer.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, indicated that since the Consortium bidding procedures have changed he has had difficulty finding out information including which prime contractors have expressed interest in a particular RFP.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the process is not clear and you do not know which prime contractors are bidding on a particular project. He stated that that is a huge part of the problem.

TA #2, the President of the Black Contractor's Association, stated that there is no way to know what prime contractors have expressed an interest in a particular RFP so a subcontractor can contact the prime about submitting a price quote unless the information is published in the newspapers. He stated that if the information was made public then subcontractors seeking opportunities to participate in public projects could get into the loop.

**Some interviewees reported that a subcontractor can determine which prime contractors have expressed interest in a particular RFP although some reported that "it is not easy." (Interviewees #4, 5, 7, 10, 12, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 31, 33, 34, 38, 42, 45, 46, 48, 50, 54, 57, 58, TA #1).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that there is a way to know what prime contractors have expressed an interest in a particular RFP so that a subcontractor can contact the prime about submitting a price quote but it is not easy. Interviewee #4 stated that all agencies, when they issue a bid or request for proposal, maintain a list of everyone who requested a copy of the RFP or the plans and specs; this is called the holder's list. He stated that the subcontractors would have to try to get a copy of the list through the agency and contact the prime contractors on the list to see if they're interested in working with the subcontractor.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that there is a way to know what prime contractors have expressed an interest in a particular RFP so a subcontractor can contact the prime about submitting a price quote. He stated that some companies will have RFPs come out periodically for as-need engineers and they might have a "kick-off meeting" and allow subcontractors to come in and ask questions and register for projects. A list is then posted on a website with information so that sub-consultants who want to be part of teams can contact the civil firms or prime firms to try to join their teams. Also, he stated that he recently received an email from a municipality sending a list of all of the people who have purchased proposal packages so that his company could contact each of them and solicit his company's services. Interviewee #5 stated that he was unsure whether any of the agencies within the Consortium provide such information.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they would not know which prime contractors have expressed interest in an RFP unless they attend the bidder's conference. Interviewee #10 stated that several months ago they heard that the Consortium was looking for a firm to do staff augmentation; they contacted the Consortium to seek out the work but they were too late to submit a proposal.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated the only way to know which prime contractors have expressed interest in a particular project is to attend the pre-proposal meeting. He stated, however, that usually his company will know ahead of time who the likely candidates are because they will have done their homework pre-proposal.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he knows what prime contractors have expressed an interest in a particular RFP when plan-holder lists are published by the various agencies. "If they do not publish a plan-holder

list, we have no way of knowing." Interviewee #16 notes that both L.A. County MTA and Metrolink are "good" about publishing plan-holder lists. Interviewee #16 said that he's never been able to do business with San Diego MTS because they do not give the company opportunities to compete – everything he feels is done in-house through "open ended contracts." None of the San Diego entities have done any "outreach."

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, reported that she knows what prime contractors have expressed an interest in particular RFPs by going to pre-proposal meetings. Interviewee #17 also noted that some job databases list plan holders.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, does go to bidder's conferences when she is aware of them, and this is how she finds out sometimes about prime contractors expressing interest in a particular RFP. Interviewee #18 stated that she may lose out on opportunities because she's not aware of jobs — there's not a lot of the kind of work that she does.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she is sure there is a system in place to identify which prime contractors have expressed interest in an RFP and it has a lot to do with relationships. She stated that she tries to do as much as she can, but the vendor fairs are a waste of time and you never meet the decision-maker. She stated: "it is business as usual."

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she locates prime contractors who have expressed interest in an RFP via pre-bid conferences. She stated that these conferences are often mandatory.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that he is informed of which prime contractors have expressed an interest in a particular RFP because the prime contractors send over the RFPs.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that you can determine who the prime contractors are at the pre-bid conference.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated there are "sometimes" ways to know which prime contractors have expressed an interest in an RFP.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the MTA has an "open house" where you can find out which prime contractors have expressed an interest in an RFP, but she has not attended this event.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that early notification of procurement is essential and is dependent on TBAC (an organization established under state law for Metro vendors) for possible advance notice. He stated that "once jobs are made public it is too late." He stated that relationships are everything.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, feels like he does not normally find out about an opportunity to bid on a project with a prime

contractor until he has been faxed a request for his information. Occasionally, he does find out about an opportunity and obtains a list of contractors who have submitted bids and sends in a responsible bid to them in response.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that when an RFP is issued, she does the research to determine who is bidding on it and if she has a relationship with the prime contractor she will approach them and seek to be a subcontractor on the project.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that the only way to know which prime contractors have expressed an interest in an RFP is to attend the pre-bid conference.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he is able to determine which prime contractors have expressed interest in a project through public notice and on his Indian organization website.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she relies on her business and networking contacts to determine which prime contractors have expressed interest in a particular project.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that on two (2) occasions she received a bid list and got a list of contact names to call in connection with the quote.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that you can learn which prime contractors have expressed interest in an RFP by word of mouth.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he is able to identify prime contractors interested in a RFP through his attendance at the pre-bid meetings.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that in the past he has received an RFP notification after the prime contractor was awarded the contract.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they have ways of determining which prime contractors have expressed an interest in a particular RFP.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported that they refer to a general contractor's newsletter among other trade publications to find out opportunities to bid on projects.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that some agencies – like the City of San Diego – have a transparent selection process that allows everyone access to determine which prime contractors have expressed interest in a particular RFP.

TA #1, the President of the Latino Business Owners of America, stated that the only way to find out what prime contractors have expressed an interest in a particular RFP so a subcontractor can contact the prime about submitting a price quote is to get into the prime's "inner circle." The subcontractors have to build a relationship with the prime.

**Denials of bid or price quote submission opportunities**

**Most interviewees reported never having been denied the opportunity to submit a bid on a Consortium project. (Interviewees #2, 4, 7, 8, 11, 12, 13, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 32, 34, 37, 38, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57, 58, TA #1, 2).** Interviewee #2, an African American male-owned structural engineer, stated that he has never been denied the opportunity to submit a bid or submit a price quote. He stated that in his line of work, as long as you are licensed you can go and bid a job. Agencies have to advertise the projects, and as long as you have a license you can generally buy the bid document and bid on the job. Interviewee #2 stated that the bidding process and being the lowest bidder is not the problem, it is about being qualified. Unless you are on the pre-qualified short list, agencies do not bother to consider you. The prequalification process requires experience with the agency or that the DBE pair up with a prime contractor. The prime contractors, however, already have DBE engineers that they have been working with throughout the years and they are not interested pairing with a new firm. He stated that the hardest part is breaking into the market.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that although he has never been denied the opportunity to submit a bid or a price quote, not knowing about the opportunity to bid is just as bad.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they have never been denied the opportunity to submit a bid or a price quote nor have they ever denied a bidder the opportunity to submit a bid or a price quote.

TA #1, the President of the Latino Business Owners of America, stated that his members have not been denied the opportunity to submit a bid or submit a price quote.

TA #2, the President of the Black Contractor's Association, stated that he has never heard of an incident in which his members were denied the opportunity to submit a price quote.

**A few interviewees reported instances in which they believe they were denied the opportunity to submit a bid on a project (Consortium and non-Consortium). (Interviewees #14, 16, 31, 33, 36, 51).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has never been denied the opportunity to submit a bid on a Consortium project. He stated, however, that they were disqualified once from an "L.A.D.O.T." project because the "L.A.D.O.T." did not accept that his company was a DBE, and so they did not satisfy the DBE requirement.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he has been denied the opportunity to bid on various projects because some bids that he knows about were not taken public.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that there was one (1) occasion where he had obtained plans and he submitted bids to become

a part of a project with all of the prime contractors who had submitted and would be submitting bids from a list he received of prime contractors who had attended the pre-bid. He contacted each of them to see who was going to submit a bid, and he put notes next to who was considering, who was a sure thing, and who definitely would not be submitting a bid. The only company which he did not send his plans to was the company that stated it was not submitting a bid, and they were the ones who were awarded the bid.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, believes that she has been denied the opportunity to submit a bid or price quote on occasion; she stated that in one particular instance the teams had already been established and they really didn't want or need her participation.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she felt that she has been overlooked for bid opportunities so that the prime contractors can utilize their friends.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having been denied the opportunity to submit a bid or a price quote; he stated that a prime contractor refused to accept his bid even though it was timely. He stated that the prime contractor discouraged him from submitting it because he did not want to accept Interviewee #51's proposal.

**Recommendations related to bidding**

**Several interviewees recommended changes to the bidding process in order to make the process more accessible to small businesses and DBEs. (Interviewees #21, 26, 37, 46, 47).** Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that the Consortium should make sure there are RFPs designed such that small businesses and DBEs can realistically compete for them.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, recommended that the Consortium adjust the bid process according to the size of the firm and help firms identify the right person to send the information.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that the Consortium should provide contracts that can be passed out to qualified DBEs so that they can get work, make money and build up the firm's creditability.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the bidding process needs to be more transparent. He stated that the Consortium needs to be more empathetic to small firms some of which are "two and three person shops." He stated that some small firms are not computer savvy but the Consortium does everything by computer. He stated that they should send information by mail and fax.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that the process should be more fair; he stated that L.A. County MTA made him go through a lot of paperwork but the small business never gets an opportunity — it is always the same people. He stated that they should change the requirements of a bid to conform to the type of business. For example,

his company can complete a project that requires 25 people even if he does not have 25 people at the time of the bid. He stated that if the agency would listen and be sensitive to his business they would understand how it works.

**One interviewee recommended that the Consortium create a separate bidding category for DBEs.** Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, suggested that there be some quantifiable measure that places DBE companies into a different category when bidding on certain projects. Interviewee #16 thinks that a percentage advantage would help small DBE business have the opportunity to receive more business when bidding against larger companies.

**Several interviewees recommended that the Consortium increase its outreach efforts, including notification of opportunities to work with the Consortium and the establishment of networking opportunities between prime contractors and subcontractors. (Interviewees #18, 25, 27, 28, 29, 32, 43, 57, 58).** Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, also wanted to emphasize the importance of the transmission of information between prime contractors and the agencies to the subcontractors. A checks and balance system is the only way to have successful relationships, especially at the project manager level.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, thinks that changes need to be made to the notification process. She recently submitted a bid for a project, but she did not have much notice as to when the materials were required to be submitted. In addition, Interviewee #18 wanted to underscore a problem with access of information about proposals. She recommended that the link be tightened between proposers and potentially proposing organizations, perhaps through the "centralized database." Interviewee #18 suggested that agencies be encouraged to use bid listings and promulgate listings around the state for various projects.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that connectivity is important. He suggested that more partnering between small businesses and prime contractors is needed and "face time" with prime contractors is essential. He stated that MTA Vendor Fairs need to have more impact in terms of being results oriented.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, recommended that the Consortium encourage dialogue or networking between small businesses and prime contractors before the bidding process begins.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, recommended that the Consortium should make DBEs and MBEs more aware of bidding opportunities. He also stated that the Consortium should provide information about the material requirements for projects.

Interviewee #29, an African American male-owned electrical contractor, stated that the Consortium should notify contractors when there are new opportunities to bid. He stated that he has heard of and been approached by people that sell this type of information but has never paid for it. He stated that you have to pay to join and find out about the list and projects and then you pay to recreate the list and have it sent to you.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, recommended improved communication between DBEs and prime contractors so that DBEs can have more direct contact with prime contractors.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, recommended that the Consortium create a notification system in which they would check for DBEs in the system and then alert them when a new contract is available.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that it would be nice to know which prime contractors and firms have picked up plans for special projects.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that if his firm has not heard about a project before the RFP is announced, they will not have a chance on it. He stated that sometimes they will learn that there have been several meetings and discussions about a project before it is out as an RFP; he stated that unless you target an organization or agency and invest heavily, and go through about three or four failed tries, you are not going to get the business.

**Some interviewees recommended that the Consortium implement race- and gender-conscious goals and small business set-asides in connection with the bidding process. (Interviewees #21, 24, 48, 49, 51).** Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, recommended that the city needs to change the way that it sends out RFPs. She stated that if a large contractor cannot find a minority subcontractor then they should be required to return that percentage of the contract monies to the agency and let the agency locate a minority subcontractor; this would give the prime contractors an incentive to utilize DBEs. Also, there should be a set-aside amount for small businesses.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that the Consortium bidding process is pretty generic in that questions about race are neutral; she stated that prime contractors should be held accountable for hiring DBEs.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, recommended the Consortium bring back DBE and MBE requirements as they had before the passage of Proposition 209.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, recommended that the Consortium return to its previous "overt" efforts to contact DBEs; he stated that the process has shut out DBEs due to the lack of programs requiring prime contractors to utilize DBEs.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the prime contractors need to solicit more minority-owned firms and small businesses.

**A couple of interviewees cited a concern that "politics" within the Consortium may impact the award of a contract or that some contractors may be permitted to avoid the bidding process. (Interviewees #12, 16, 45).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the Consortium agencies need to do something about what he called the political side of bidding, although he did not know how to fix that. He stated that he has been "hearing through the grapevine" that some Consortium members are trying to "spread the work around." He stated that this is good to counteract his perception of the political influence but it is bad for a qualifications based system.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, recommends that the agencies be made more accountable for the bidding process. He would also like to see requirements regarding a dollar amount for contracts that must go out for public bidding over a certain amount. Interviewee #16 also says that there shouldn't be any "open contracts" for services that essentially allow certain contractors to avoid the public bidding process. Interviewee #16 thinks that the "open contract" process is an abuse and misuse of public funds.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she would get a lot more bids if there was a fair bidding process in place. She feels that the Consortium utilizes the same people, and she believes those people have "privileged" information.

**Some interviewees recommended that the Consortium meet with companies responding to an RFP. (Interviewees #14, 16).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, recommended that the Consortium agencies should come out and meet the various companies responding to an RFP. He stated that often the individuals judging the RFPs are limited to what they read in the RFPs based on certain criteria; he stated that this prevents the individuals judging the RFPs from learning about the companies' various capabilities. He stated that "so often" they will go through a presentation and the individuals judging the RFP do not know what it is that his company can do. In contrast, Interviewee #14 described a more comprehensive process of reviewing companies in the private sector.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, suggests that individual companies work jointly with the in-house labor of the various agencies. Such action by the agencies would, in Interviewee #16's opinion, create more synergy between large and small companies for additional work opportunities.

**Other interviewees offered additional miscellaneous recommendations relative to the Consortium's bidding process.** Interviewee #10, a DBE-certified African American female-owned accounting firm, recommended that other Consortium agencies should "follow Orange County's process."

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, would like to see the same "on-call" contracts offered to large firms be offered by the Consortium agencies to smaller businesses. According to Interviewee #17, this would create even more opportunity.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that they would like more feedback; often after they submit their paperwork the prime contractor will not call back.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that prime contractors should be encouraged to look for quality as opposed to just the low price.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the prime contractors should not solicit work from the DBEs but rather the work should be formulated through the Consortium agency; he stated that only then will it be fair and the prime contractors cannot make excuses to either not choose you or not pay a fair price.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she wished that the DBEs that go after the same projects that she does would use better business ethics and bid responsibly.

**A number of telephone interview respondents — primarily majority-owned firms — recommended that public agencies should consider more than just low bidder status when awarding contracts.** Respondents suggested that a firm's qualifications should play a bigger role in contract awards. For example, a majority-owned firm said that focusing on price leads to a disproportionate number of contracts going to minority-owned firms: "My experience is that [public sector contracts] are usually only [going to] the lowest bid, and it's usually going to Mexicans. My complaint is, let's leave it in the country."

### B. Telephone interview anecdotes regarding public and private sector work

The following anecdotes regarding the bidding process were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**A large number of telephone interview respondents — representing both MBE/WBE and majority-owned firms — said that there are difficulties associated with bidding on public sector projects.** Many respondents identified complex bid processes as a barrier to doing work in the public sector. For example, a majority-owned firm indicated that the difficulties associated with public agencies' bid processes require firms to have extra staff and a well-developed bidding system: "You basically need to hire someone with expertise in writing proposals and understanding the terminology and what the solicitors want to see. You need more manpower [to bid on public sector projects]."

**Several telephone interview respondents indicated that excessive paperwork is a problem with pursuing public sector work.** Both MBE/WBE and majority-owned firms reported that bidding on public sector work requires a great deal of paperwork. For example, a majority-owned firm said that, compared to the private sector, the public sector requires much more paperwork: "[There is] just so much paperwork [in the public sector] as opposed to private [ sector] jobs. Sometimes with schools, they're slow to pay as a result of the all the paperwork."

**Some telephone interview respondents indicated that contract specifications can be complex and difficult to deal with.** Both MBE/WBE and majority-owned firms said that public agencies' contract specifications can be stringent. For example, a majority-owned firm said, "Just don't plan on taking shortcuts [in fulfilling contract specifications]. If a plan shows something being done one way, that's the way it has to be built."

## V. Partnerships

### A. Consortium anecdotes regarding partnerships

**Some of the businesses interviewed reported no knowledge of or experience with partnerships, either joint venture or mentor-protégé arrangements. (Interviewees #1, 5, 6, 7, 9, 10, 11, 19, 28, 29, 40, 41, 43).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, did not have any experience with a joint venture but he would be interested in participating with that; he would also like to participate in a mentor protégé program but he had no experience with such a program.

**Joint ventures**

**Several interviewees reported knowledge of or experience with a joint venture program. (Interviewees #2, 3, 4, 8, 13, 14, 17, 18, 20, 22, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 39, 44, 45, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has heard of joint ventures between DBEs and non-DBEs. For instance the public agencies, like SANDAG, require DBEs to pair up with prime contractors to do work for the agencies. SANDAG provided him with contact information to pair up with a prime contractor. However, the prime contractors already have their teams. Interviewee #2 said the agencies have pretty much relegated the responsibility to the prime contractors to hire DBEs. He stated that he has been unable to pair up with any of the prime contractors.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that joint ventures between DBEs and non-DBEs are fairly rare in the environmental consulting business. They do happen on occasion but only between large firms with thousands of employees. He stated that typically a large firm would not joint venture with a smaller firm. Rather, the larger firm would hire the smaller firm as a subcontractor and it would hold the purse strings. Interviewee #3 stated that he vaguely recalled several years ago there was some entity trying to promote a joint venture but he does not think it ever happened. He suspects that it did not happen because the prime contractor wanted complete control of projects. The other issue is money, everybody has to be billable. Depending on firms the prime may want the DBE to be 100 percent billable. The prime expects to get so much money from the contract. Interviewee #3 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, entered into a joint venture with two other firms in the 1990s: a large non-DBE firm and another DBE firm. Interviewee #4 stated that the entities formed a partnership to go after work in San Diego. The partnership lasted seven years. He stated that they were successful in obtaining between 12 and 20 public projects in San Diego. The joint venture has since been dissolved.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, has "often considered" entering into a joint venture with a DVBE; he is aware of this program through the State of California. Interviewee #8 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, entered into a joint venture agreement with a non-DBE in 1999 or 2000 for MTA; he stated that it was a positive experience.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he had once participated in a joint venture and it was a "tough situation." He stated that joint ventures are not easy relationships to build. He stated that his company engaged in a joint venture when they felt it was advantageous, dependent upon the contract. He stated that companies engage more in joint ventures when they are starting out in order to supplement their experience and meet the requirements for an RFP. Interviewee #14 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has submitted proposals as a joint venturer, but the company has never won any of those jobs.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, has had positive experiences with the joint venture program, and has been involved with joint ventures for many proposals. Interviewee #18 did not have any knowledge of or experience with a mentor-protégé program.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, participated in a joint venture with a private sector prime contractor.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, has participated in joint ventures in both the public and private sectors; she stated that there are always joint ventures.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that he has participated in a joint venture on a private sector project.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of joint ventures within the Consortium but had never participated in one.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has participated in a joint venture in the public sector. She is aware of joint ventures with the Consortium and across the public and private sectors.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, had participated in a joint venture in the public sector.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has not experienced a joint venture between a DBE and non-DBE. He stated that he has not

partnered in the capacity of a joint venture. He has worked with other firms on projects but none within the same scope of work in which they were considered partners. He stated that he feels there is not any incentive to initiate a joint venture type of relationship between a DBE and non-DBE firm. He stated that joint ventures do exist but they are typically beneficial to the larger business' interests.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he has participated in a joint venture with the manufacturer of some of his products.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, was aware of joint ventures in the Consortium, non-Consortium public sector, and the private sector.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported having participated in a joint venture on a public sector project in Texas with a DBE; she was not aware of any other joint ventures.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she participated in a joint venture in the public sector.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, has participated in a joint venture in the public sector.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, participated in a joint venture through one of the Consortium member agencies.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had experience with a joint venture with the Consortium.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, had experience with a joint venture in the private sector.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported having participated in a joint venture with another electrical contractor.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he was aware of two or three joint ventures over the past 15 years.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, indicated that he has discussed participating in a joint venture and anticipates participating in one in the next six months.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that his firm has participated in joint ventures and was aware of other joint ventures in existence.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, was aware of joint ventures but had never participated in one.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported having knowledge of joint ventures in the private sector but had not participated in one.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported having participated in a joint venture in the private sector.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that he was aware of joint ventures but noted that his firm has intentionally avoided participating in one because it is too time-consuming and requires one to practically set up an entire new company.

TA #2, the President of the Black Contractor's Association, stated that he is not aware of any joint ventures between a DBE and non-DBE in the private sector, but stated that there have been several in the pubic sector.

**Mentor-protégé**

**Several interviewees also reported knowledge of or experience with a mentor-protégé program. (Interviewees #2, 4, 12, 13, 15, 16, 17, 21, 22, 23, 24, 26, 27, 30, 31, 33, 35, 36, 37, 42, 45, 46, 47, 49, 50, 51, 53, 54, 55, 56, 57, 58, TA #1, 2)**

Interviewee #2, an African American structural engineer, stated that he has heard of mentor-protégé programs between DBEs and non-DBEs. He stated that once in a while he receives an email from Caltrans about such programs. He stated that he knows of one DBE that participated in the program five or six years ago as a subcontractor for a prime. This particular subcontractor really liked it, and it was a good project, a SANDAG railway project. Interviewee #2 stated that he has considered participating in the program when it begins again.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he was not aware of the Consortium's mentor-protégé program but was aware that Caltrans had a "protégé" program in which he participated last year. The program went pretty well and was helpful. His mentor was a non-DBE. He explained that the program works by pairing large prime contractors to volunteer as a mentor and protégé with DBEs. The program was just a one-year program. Interviewee #4 stated that he began participating in the program in October 2007 and the program will end in October 2008. Interviewee #4 stated that he found value in the program.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he did have experience with a mentor-protégé program through Caltrans District 7. He stated that in his experience the program was "non-results oriented." He stated that the first mentor "perhaps forgot that we were their protégé." He stated that they dissolved that relationship and signed up to receive a second mentor with whom they pursued a project; they were not successful. He stated that as the protégé they actually brought work to the mentor. Interviewee #12 did not have any knowledge of or experience with a joint venture.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he believes a mentor-protégé program would be a great idea but he has not been able to find anyone to partner with. He stated that the mentor-protégé program with the SBA was a lot of work for not a lot of benefit.

Interviewee #15, a Hispanic American male owner of a MBE certified engineering and construction company stated that he has a lot of experience in the mentor-protégé program, and has been very

successful with his mentor. Interviewee #15's work has been referred out by his mentor and it is through the program that he was encouraged to become a prime contractor. Interviewee #15 did not have any knowledge of or experience with a joint venture.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, has no experience with the mentor-protégé program because they haven't found anyone that wants to participate in the program with them. Interviewee #16 noted that it sounded like a great program that isn't being "recommended." Interviewee #16 thinks that there are not enough incentives for the larger companies to participate in the mentor-protégé program. Interviewee #16 did not have any knowledge of or experience with a joint venture.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that the company is now a mentor, but that it never participated as a protégé. The mentor-protégé program has been very positive for Interviewee #17's company.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, had experience with a mentor-protégé program through the federal government.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, had participated in a public sector mentor-protégé program.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, participated in a mentor-protégé program years ago but was not aware of any such programs now.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has participated in a mentor-protégé program in the private sector with USC through its public arts program.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that he had minimal experience with a mentor-protégé program.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, had participated in a mentor-protégé program through Caltrans.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has heard of mentor-protégé programs but has never participated in such a project. He has learned that the people who do get to participate in these types of programs are handpicked (most likely a family member or relative or close friend or some sort of other way that would make them want to train a potential competitor), thus limiting the ability for regular firms and truly disadvantaged firms to become a part of such programs. He suggested forcing mentors to work with their protégés. He stated they should position them in a way in which they would work with them to get a project or risk losing their funding.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, had participated in a mentor-protégé relationship in the Consortium.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, had heard of a mentor-protégé programs but was not aware of any real program.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, was aware of MBDC Capacity Building sponsored in part by Southern California Edison. She did not have any experience, however, with a mentor-protégé program.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she was aware of some mentoring programs sponsored by private companies and through public universities. She also stated that she has developed her own mentoring program and the people that she invited to participate were graduates of court reporting schools.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has participated in a mentor protégé program in the private and public sectors.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, was involved in a mentor-protégé program at the State Board of Equalization.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had experience with a mentor-protégé program, but she did not feel that it was a true mentor-protégé program.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the federal government, L.A. County MTA, and Metro all have mentor-protégé programs and he has been trying to get involved in one for 10 years, but he just has not had the time.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, believed that he remembered participating in a mentor-protégé program through the federal government. He was not aware of other mentor-protégé programs.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, was aware of mentor-protégé programs and noted there used to be several programs in the past.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was aware of a mentor-protégé program offered by a private company.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, had no knowledge of any mentor-protégé program but reported having heard prime contractors talk about such programs during projects. He stated that no such opportunities have materialized and he feels that once majority firms learn that there is no benefit to them, they lose interest in the idea.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported having participated in a mentoring program — not targeted towards DBEs — through private organizations of which he is a member.

Interviewee #54, a Caucasian male owner of a general contracting firm, stated that they have an internal mentoring program for small firms within a department of their firm.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that he has participated in several mentor-protégé programs and he understands the importance of them. He stated that he would like more small and minority-owned businesses to do well.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported having general knowledge of mentor-protégé programs, but said he had no knowledge of the specific details.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported having participated in a mentor-protégé program through a local college and was also aware of programs in other areas.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, noted that an office of his firm has participated in a mentor-protégé program as a mentor to a DBE. He was aware of other mentor-protégé programs.

TA #1, the President of the Latino Business Owners of America, stated that he has heard of mentor-protégé programs between DBE and non-DBE business owners but was not aware of any such program with Consortium agencies.

TA #2, the President of the Black Contractor's Association, stated that he is not aware of a Consortium mentor-protégé program between DBEs and non-DBEs and did not believe that Caltrans had any such program. He did recall that the City of San Diego had a similar program that was not very successful because the program only accepted one-two protégés and it was a very slow process.

### B. SDCRAA anecdotes regarding partnerships

The following anecdotes regarding partnerships were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

**Joint ventures**

**A few interviewees shared their experiences with joint ventures.** Interviewee #SD31, representing a Caucasian male-owned firm, indicated that joint ventures are very beneficial to his firm and to other small firms in construction. Regarding joint ventures, he explained: "It gives me access to a level of [the company] that I wouldn't get otherwise."

Interviewee #SD40, representing a Caucasian male-owned firm, said that joint ventures make sense for his firm on large projects: "We sometimes [participate in joint ventures] on large mega projects because we find that two firms are better than one. … You cannot have everything tied into one project and can combine the expertise of two firms."

**Several interviewees who reported having no direct experience with joint ventures had positive or neutral opinions of them.** SDTA #1, representing a local chamber of commerce, indicated that he supported the idea of joint ventures, because "[joint ventures] could help to get some of the local smaller firms … into the game."

SDTA #3, representing a local chamber of commerce, and SDTA #11, representing a veterans trade organization, both said that joint venture programs are worthwhile endeavors for minority- and female-owned businesses. Similarly, Interviewee #SD14, representing a Hispanic American male-owned firm, said that joint ventures are useful for minority- and female-owned firms, particularly on large projects.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that he supports the idea of joint ventures but that their utility is dependent on whether the team makes sense. That is, each partner has to bring skills to the project that the other partner cannot bring on its own.

Interviewee #SD32, representing an African American male-owned firm, stated that joint ventures can work, particularly on large projects: "If you're looking at a gigantic contract — $300 million — there are very few companies that can do those kinds of jobs without a joint venture."

**Other interviewees who reported having no direct experience with joint ventures had negative opinions of them.** Interviewee #SD21, representing a Caucasian male-owned firm, said that he could imagine joint venture working for minority- and female-owned firms, but that he views them as being unfair. He said, "I don't believe it's reasonable [to offer financial incentives to find a joint venture partner]."

Interviewee #SD45, representing a Caucasian male-owned firm, said that joint ventures are " ... good to a point, but generally [small] firms don't want to cough up ownership [to large firms]."

SDTA #10, a supplier trade organization, described joint ventures and joint venture incentives as "a tough area." He said that very few small firms understand them and their utility. He noted that small firms prefer to work under their own brand names.

SDTA #7, representing a construction trade organization, reported that joint ventures involving MBE or WBE firms typically are not very successful. He said that such agreements are usually set up to "pacify the politicians," rather than to create sensible partnerships. He remarked, "… when you're in a joint venture you got to bring something to the table other than [being] black."

**Mentor-protégé**

**Several interviewees shared their experiences with mentor-protégé programs.** Interviewee #SD14, representing a Hispanic American male-owned firm, reported that his firm has taken part in mentor-protégé programs through Caltrans as the protégé. He said that those programs are useful in that they bring prime contractors face-to-face with smaller, MBE and WBE firms. He reported that those programs helped his firm in terms of networking and marketing.

Interviewee #SD5, representing an African American male-owned firm, is currently part of a mentor-protégé relationship as the protégé. He said that the mentor has been "very helpful." Interviewee #SD20, representing an Asian American male-owned firm, reported that his firm has taken part in mentor-protégé programs several times as the protégé. He said that the programs were useful but that the number of mentor-protégé opportunities is limited.

Interviewee #SD24, representing a Caucasian male-owned firm, reported that his firm is working with two protégés as part of SANDAG's mentoring program. Regarding his firm's motivation to participate in the program, Interviewee #SD24 stated, "We were encouraged to participate by SANDAG, and we certainly want to be on good terms with them. Maybe we're imparting great value to this [WBE firm] whose wealth and income I would envy."

Interviewee #SD4, representing a Caucasian male-owned firm, participated in a mentor-protégé program twice as the mentor. He reported that the first protégé with whom his firm worked went out of business after submitting a bad bid, and the second protégé had unrealistic expectations regarding her firm's growth.

Interviewee #SD25, representing a Caucasian male-owned firm, was involved in mentor-protégé programs when he worked at a large national firm. He indicated that they were positive experiences, and that he still works with most of the protégés from those programs. He said that he has seen their firms grow substantially over the years. Interviewee #SD25 went on to say that he understands why firms in construction (as opposed to firms in engineering) are hesitant to take part in mentor-protégé programs as mentors — it is akin to those firms strengthening their own competition in a "low bid environment."

Interviewee #SD37, representing a Caucasian male-owned firm, said that he supports mentor-protégé programs and finds them to be mutually beneficial: "It shows us what the smaller companies are doing and the way they are approaching work. But it also shows them how we're approaching it."

Interviewee #SD46, representing an African American male-owned firm that participated in a mentor-protégé program as the protégé, reported that the program helped his firm learn about the business side of the industry and also helped increase his firm's bonding capacity.

Regarding mentor-protégé relationships, Interviewee #SD47, representing an African American female-owned firm, said, "[Mentor-protégé relationships] can be helpful or they can be a hindrance. If [the mentor] makes you sign something saying you can't participate with anybody else … it could be three years that you're stuck with somebody that's not trying to help you …."

**Several interviewees who reported having no direct experience with mentor-protégé programs had positive or neutral opinions of them.** Interviewee #SD21, representing a Caucasian male-owned firm, said that although his firm has never directly participated in a mentor-protégé program, they worked with a mentor-protégé pair on a project. According to Interviewee #SD21, the arrangement appeared to work well in that case. He said, "I believe the mentor ended up finishing the job. The mentor entity actually provided labor and labor financing."

Interviewee #SD27, representing a Caucasian male-owned firm, said that his firm is interested in participating in a mentor-protégé program through the Airport. He said that his firm considers their subcontractors as their employees, and they see both a moral value and a business value in supporting local firms.

Interviewee #SD31, representing a Caucasian male-owned firm, described mentor-protégé programs as "excellent," because "it's one of the main ways to cover bonding." That is, as part of those relationships, the mentor can bond for the protégé. In addition, Interviewee #SD31 suggested that the mentor can help the protégé make connections within the industry.

Interviewee #SD32, representing an African American male-owned firm, indicated that mentor-protégé programs are very helpful, particularly to small firms trying to grow: "It gives you the ability to bond higher, get that larger job that you wanted. …" But, Interviewee #SD32 said that he has also seen a few situations in which the mentor has taken advantage of the protégé: "Essentially, the big business [does] the small business's work even though it was the small business that got the contract — just using [the small business] as a vehicle to get more work."

Interviewee #SD40, representing a Caucasian male-owned firm, reported that the Associated General Contractors of America (AGC) has a mentor-protégé program that is very beneficial to local MBE/WBE firms.

SDTA #7, representing a construction trade organization, indicated that his organization supports the idea of mentor-protégé programs and has one in place for its members. Speaking about mentor-protégé programs in general, SDTA #7 remarked, "… what a great deal [for the protégés] to be able to have [a mentor] that's been in the business for years get in and tell you what to do. It takes years out of the learning curve." He added that in order for mentor-protégé programs to be successful, the pair has to be matched correctly.

SDTA #2, representing a Hispanic American trade organization, indicated that he strongly supports mentor-protégé programs and believes that public agencies should offer financial incentives to develop mentor-protégé relationships. SDTA #2 said that mentor-protégé programs give smaller firms the confidence to progress and teaches them the basic skills needed to be successful: "Most jobs aren't rocket science — they require a check list and repeat."

SDTA #13, a retired official from a local public agency, stated that the Airport should continue encouraging participation in mentor-protégé programs and should do more to facilitate firms meeting and entering into those relationships. She went on to say that businesses have to stop viewing each other as combatants and instead view each other as friendly competitors.

SDTA #11, representing a veterans trade organization, said that mentor-protégé programs are excellent, but one disadvantage of them is that mentors are legally prohibited from working with their protégés in the future.

SDTA #3, representing a local chamber of commerce, and SDTA #10, representing a supplier trade organization, both said that mentor-protégé programs can be useful to MBE and WBE firms. Interviewee #SD 16, representing an African American male-owned firm, also indicated that such programs are worthwhile.

SDTA #9, representing a public works trade organization, described mentor-protégé programs with which he was familiar: "The California Mentor Program for [architecture and engineering] was great. This program had 25 [mentor-protégé] pairs in its first year. The program is for small business with a focus on DBEs. The City Program on the other hand takes on two to three new teams per year. The issue is finding mentors who are willing to regularly meet face to face. This type of programming can be very helpful, but there are not enough opportunities and it is very competitive." He indicated that in order for mentor-protégé relationships to be successful, both partners have to have similar expectations: "I think the difficulty with DOT mentor-protégé programs is that the mentor and the protégé have different perceptions of what should come out of the relationship."

**Other interviewees who reported having no direct experience with mentor-protégé programs had negative opinions of them.** Interviewee #SD2, representing an African American female-owned firm indicated that mentors are not ideally suited to give advice to protégés: "You need to know so much as a company to be able to advise me. The mentor only knows a slice of the business and can't advise across all areas." One problem that Interviewee #SD2 described specifically is that mentor firms tend to be larger and thus can only provide advice about systems and procedures for large firms but not small ones.

Interviewee #SD10, representing an African American male-owned firm, indicated that training programs in general are of no use to his firm: "Training and mentoring is a waste of time and money. I have been at this too long for that to be of use for me."

Interviewee #SD28, representing a Caucasian female-owned firm, said that mentor-protégé relationships are useful in general, but that they are not very applicable to her firm's situation because of the niche industry in which the firm works. She added that the competition is so stiff in her firm's industry that it would be difficult to convince one firm to help another: "One of our competitors is not going to … take us under their wings … and help us. Nobody's going to give any advice to help anyone else out."

SDTA #8, representing an electrical workers trade organization, reported that she has heard quite a bit of negative feedback about mentor-protégé programs. The complaints have predominantly been related to the time commitment and a reluctance to share trade secrets.

SDTA #1, representing a local chamber of commerce, described mentor-protégé programs as "intriguing", but indicated that he is worried about the mentor being in a position to take advantage of the protégé.

### C. Caltrans anecdotes regarding partnerships

The following anecdotes regarding partnerships were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**Joint ventures**

**Several of the businesses interviewed had made at least one attempt at participating in a joint venture (Interviewees #CT9, #CT16, #CT34, #CT45, #CT48).** However, none of these joint ventures involved work on Caltrans projects. In addition, a few of the trade associations interviewed had either directly been involved with a joint venture or had a member of its association who had joint venture experience (CATA #1, #2, #3). None of these experiences were on a Caltrans project.

**One business had been approached about a joint venture but never participated (Interviewee #CT16).**

**Of the businesses with experience participating in joint ventures, the joint ventures varied widely in experience.** Interviewee #CT9, a white male-owned firm, had a number of joint venture experiences but none with DBEs. Interviewee #CT16, a white male-owned firm, had joint venture experience with DBEs. Interviewee #CT48 was involved with joint ventures on both public and private contracts.

**Of the trade associations' involvement with joint ventures, two of them were currently involved in joint ventures with DBEs (CATA #2, #3) and one had a member participating successfully in a joint venture with a large firm (CATA #1).** In addition, CATA #1, an Asian American trade association, knew of small women-owned businesses participating in joint ventures with large firms. CATA #3, Hispanic trade association, who is currently participating in a joint venture with another minority business, stated that the experience has been very positive. CATA #3 has no knowledge of any of its members having experiences in joint ventures with non-DBE firms.

**Mentor-protégé**

**Almost all of the businesses interviewed have not participated in a mentor-protégé relationship. For those businesses aware of the Caltrans mentor protégé program, the consensus is that it is just getting started.** Interviewee #CT16, a white male-owned firm, previously participated in a federal Small Business Administration mentor protégé program as a mentor.

CATA #1, an Asian American trade association, is a protégé in Caltrans' program and expressed that the program "has been very good." He was among the first to promote Caltrans' mentor-protégé program. CATA #1 and two of its members had received jobs or at least been put on a project team as a result of their involvement with the program.

Interviewee #CT81, a Hispanic male-owned firm, has no knowledge of formal partnership programs administered by Caltrans, but is aware of informal arrangements in the private sector where prime contractors mentor subcontractors, and help them with bonding and sending work their way.

A DBE and 8A company submitting written testifimony is involved in the San Diego mentor-protégé program with the AGC and stated there "seems to be some conflict with their participation and their stance on programs . . . [and] there remains a resistance to inclusion and opportunities." (Written testimony submitted 3/26/07).

**Recommendations related to partnerships**

**Interviewees urged Caltrans to continue and expand efforts to grow mentor-protégé programs, and communicate the need for mentors and protégés to Caltrans's contractors and vendors. (CT Interviewees #7, CATA #7).** Some interviewees suggested Caltrans monitor the pairings to ensure that each side is receiving the full benefit of the relationship.

Interviewee #CT7, a white female-owned business, would like Caltrans to establish more training programs where training was done by the firms themselves. He suggested Caltrans could improve upon the apprentice program and have 20 percent of people working on any job (particularly those working as landscape inspectors) be working as apprentices. Doing so would lower the cost to Caltrans and that "everybody would benefit." Though he said "it's not a DBE issue," he noted that "it could help DBE firms increase their size."

## VI. Prequalification

### A. Consortium anecdotes regarding prequalification

The following anecdotes regarding prequalification were obtained from interviews that the study team conducted in connection with BBC's 2009 Consortium study.

**Most interviewees who had gone through the Consortium's prequalification process reported no difficulties. (Interviewees #9, 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 27, 32, 33, 38, 40, 41, 42, 43, 46, 48, 51, 53, 56, 57, 58).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, had forgotten the Consortium's prequalification process; he did not have any complaints.

Interviewee #10, a DBE-certified African American female-owned accounting firm, went through the prequalification process for Metrolink; she stated that it was a good process but it was time-consuming.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that the prequalification process was "pretty easy."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he did not have any complaints about the Consortium prequalification process. He stated that the most important thing is that the Consortium be responsive so that an individual can get pre-qualified in time to respond to an RFP. Interviewee #13 stated that he had a terrible time getting pre-qualified in another state because the process took too long.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the prequalification process is "mostly paper."

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, experienced prequalification with L.A. County MTA and it was not a problem. Interviewee #15 stated that the agency went out of its way to be helpful.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, went through the prequalification process with LA County MTA, and every year this process occurs again. So far, Interviewee #16 stated the process has been great and there is a whole department to walk you through the process of prequalification.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, underwent the prequalification process with L.A. County MTA and stated that there were no problems encountered. Interviewee #17 noted that some of the agencies are requiring more in-depth financial information as part of the prequalification process; this process may be cumbersome, but it is business.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, experienced prequalification on a SANDAG project and the experience was neutral. On that project, Interviewee #18 was a subcontractor and she didn't interface directly with the agency.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, reported that she had a positive experience with the Consortium's prequalification process.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her experience with the Consortium prequalification process has been positive and smooth.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that he has had a positive experience with the Consortium's prequalification process, but it does require a lot of paperwork.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, reported a positive experience with the Consortium's prequalification process. She stated that once you go through the process it is okay. She said that "Unified Certification" is good.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, had a positive experience with prequalification, but noted that his firm is not prequalified on all of the various lists of firms.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that his experience with the Consortium's prequalification process was not bad. He would rate his experience as "just okay."

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that he had a positive experience with the Consortium prequalification process.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, did have experience with the Consortium's prequalification process but noted that they were ultimately unsuccessful when they bid on a Consortium project.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated the prequalification process was mostly just paperwork and it was a positive experience.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the Consortium's prequalification process was very simple.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having had a positive experience with the Consortium's prequalification process and noted that prequalification has resulted in work approximately 25 percent of the time.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, noted that although his firm had never participated in the prequalification process, his own experience with the process has been fine.

**Some interviewees reported concerns regarding the frequency of prequalification. (Interviewees #12, 20).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the prequalification process with L.A. County MTA has been fine and he has no concerns; "it is just more paperwork." He stated that he does not believe that they need to do it every year. He stated that monitoring DBE status every year is not necessary. He stated that L.A. County MTA has been "excellent" and the people that they have dealt with have been "great."

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she understood why the Consortium has a prequalification process, but stated that it requires too much paperwork and too much detailed financial information — especially if her firm is not selected. She stated that there should be one central file to maintain this information, and it should only be updated when changes occur or annually.

**Some interviewees reported that the Consortium's prequalification process is unnecessary and often a deterrent to pursuing work with the Consortium; some interviewees reported other concerns with the prequalification process.** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, has not gone through the prequalification process. He is deterred from participating in the prequalification process because, he stated, the agencies require participants to have prior experience with the agency or to pair up with a prime. He has, however, found it difficult to pair up with prime contractors because they tend to use the same consultants that they regularly use on projects. Interviewee #2 also stated that the certification process is too cumbersome and he thinks the agencies should improve how they mete out business.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that in his opinion prequalification is unnecessary and just places an additional burden on the subcontractor.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he participated in the Consortium's prequalification process through L.A. County MTA and he felt it was unnecessary. He stated that prequalification was just one extra step to take when he felt it really should not even be required as far as he is concerned as it relates to getting the job done.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has attended a prequalification meeting, but he did not get any work out of it. He said he has attended events where L.A. County MTA officials were going to be in attendance, and he said that he realized they do not do much business with small businesses. The small businesses do not qualify for the big L.A. County MTA contracts, and he discovered he'd have to get in with the prime contractors in order to start landing some work and "schmooze" with the larger prime contractors, but there is a different type of politics that is involved with dealing with them because they want you to utilize labor union workers. He stated that he does not mind utilizing union workers because he is a union member, but this becomes tricky when he goes to make his bid and his bid is higher than his competition that is already linked in within the prime contractor network and are not bound by the same unwritten restrictions. Labor workers are more expensive than the staff that Interviewee #31 uses.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, believes that the prequalification process is yet another barrier obstructing minorities' entry into bidding on procurements.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that the prequalification process is tedious and can be problematic.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that prequalification was like "going through the motions."

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported feeling as though the prequalification process is "useless."

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the prequalification process was okay, but believes it is an opportunity for competitors to meet one another and for large companies to have an opportunity to leave small companies out by making sure they did not have a chance to be awarded work.

TA #1, the President of the Latino Business Owners of America, was generally aware that members must go through a prequalification process to work on Consortium projects. He stated that the certification process should be sufficient and that the additional prequalification process discourages participation. He stated that most members simply choose not to go through the prequalification process. A lot of firms choose not to recertify. The few members who actually obtain business after going through the process do recertify.

TA #2, the President of the Black Contractor's Association, stated that he has not heard much feedback about the Consortium prequalification process, but thought many of his members, particularly those who own small "mom & pop" businesses do not want to do through the prequalification process. His members find that it is one more layer of bureaucracy that they are unwilling to go through particularly when they are unsure whether the process will yield any success. He stated that those who will do it go through with it, and those who do not want to do it simply choose not to.

**Several interviewees had no experience with the Consortium's prequalification process. (Interviewees #1, 3, 4, 5, 6, 7, 8, 19, 29, 39, 44, 47, 52, 54).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he has not experienced the prequalification process except on huge projects like the naval base closure. He explains that the consultants had to pre-qualify on these projects.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has not had any experience with the Consortium prequalification process. Interviewee #7 was not sure that there was a prequalification process for subcontractors.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, did not have any experience with the Consortium's prequalification process although he was aware of a SANDAG questionnaire for prequalification.

**Recommendations related to prequalification**

**Several interviewees recommended changes to various aspects of qualification requirements including a requirement of prior work experience with the Consortium.** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, recommended that the Consortium drop the prequalification process. He also recommended that the qualifications in his line of work should be based on whether his company can design a particular type of structure not on whether it is a public or private project. He stated that there is not much difference in the experience one would need to build a concrete structure for a private company than to build one for a public agency. He stated as long as you have a B.S. in concrete structures, the qualification process should not be whether you have worked with the public agency, but whether you have done that line of engineering work.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that once you get a job with one entity you continue to get work until the person who does the majority of work leaves the firm or the firm shoots itself in the foot; but, it does not allow for anyone else to get work if you are the "new kid" on the block. If you are new, you have to hire someone who has already worked for the Consortium to get some work. Interviewee #3 stated the Consortium should try to increase work or participation for people who do not have the experience with this particular entity, and spread the work around more. He stated that a firm might have more than enough experience doing exactly the same thing for a different entity, but just because you have not worked for the Port of San Diego does not mean that you have not done fuel cleanups somewhere that is exactly like the fuel cleanups that they want to do. He suggested expanding the spectrum of companies that do the work. He also stated that in both cases it will cost more money to do the job whether it is overall experience in the field or experience with the entity. He stated that the Consortium has to be willing to spend more money to increase participation.

Interviewee #11 noted that it is often difficult to meet the Consortium's criteria. She stated that the criteria are often tailored to fit the last vendor, for example, regarding the experience requirements. She stated that it would be better if the Consortium were to tailor its criteria to fit the vendor that they would like.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, recommended changing the SBE net income threshold requirement.

**One interviewee recommended more flexibility related to DBE insurance requirements.** Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, is a small business and she has a high level of general and professional liability insurance. She routinely has to deal with E&O insurance clauses in various contracts, and recommends that for planning studies, this requirement should be eliminated. Interviewee #18 suggests that there be more flexibility related to insurance requirements for DBE Program participants, particularly when looking at the actual work to be performed.

### B. Telephone interview anecdotes regarding prequalification

The following anecdotes regarding prequalification were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**A few telephone interview respondents indicated that qualifications requirements are excessive in the public sector.** Those respondents reported that it is difficult to be successful in the public sector because of the restrictions related to a firm's qualifications. For example, a minority-owned firm remarked, "[Public agencies] make it so difficult to be a minority-owned business [and] get contracts. Just all the hoops you have to jump through — it's not worth it really."

## VII. Licensing

### A. Consortium anecdotes regarding licensing

**The majority of interviewees reported no issues in connection with obtaining the licensing required in their particular field. (Interviewees #1, 2, 3, 4, 8, 9, 10, 12, 15, 16, 17, 18, 22, 23, 24, 25, 27, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 50, 51, 52, 53, 54, 56, 58, TA #1, 2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that they are a state-licensed contractor. He stated that his experience obtaining licensing was pretty straight forward; it involved paperwork and a test and it was a pretty easy process.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that to do any structural engineering work in the State of California, you have to have a license. He stated that he has a professional engineering license and licensing is not an issue.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that no licensing is necessarily required on the projects that he worked on. He explained that the regulator will require either a professional engineer or registered geologist stamp on certain reports, but the project owner does not require licensing on an RFP.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that only the professional licenses required on projects that he works on are engineering and geology licenses. He stated that his experience in terms of licensing has not been good or bad, he is indifferent. He stated you just have to take the exam and if you pass it you become licensed.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that obtaining licensing is "cut and dry."

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that under the state professional engineering license law, the principal owners or key officers of the company must be licensed engineers. He stated that California's law is "tighter" than any other state.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that it was easy to obtain her CPA license.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he is required to provide his registration or seal on reports and they are licensed as civil engineers in California.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, indicated no problems with licensure, stating that it was easy and straightforward. Interviewee #15 stated that there were classes to assist with the licensure process.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that the licensing process is mostly a joke and that the applications are outdated; technology has changed so much. The process was nothing out of the ordinary for Interviewee #16.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated that she had no problems or issues with licensing.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, reported that she had a positive experience obtaining licensing.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, obtained his engineering license and felt it was necessary in order for him to do the work that he does now.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that in her experience licensing has been okay, straightforward, and not difficult or overly confusing.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported having obtained his State Contractor's License as a requirement for doing business.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he earned his license after two years of experience working as an accountant and receiving his CPA certification.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported that they did not have any problems related to the licensing process. He stated that their firm has held their various licenses for over 27 years and it is necessary not only to do their job, but also has helped to build confidence in their customers. He compared this to unlicensed contractors who sometimes undercut their work.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that his experience with licensing was positive for the most part given that it is necessary and mandated.

TA #1, the President of the Latino Business Owners of America, did not think that licensing posed any issue for members. He stated that all members have to have typical industry licensing and permits and that all are able to obtain the needed licensing.

TA #2, the Black Contractor's Association, stated that many of his members are required to obtain contractor licensing, but he has not heard any information about their experiences with licensing.

**Other interviewees reported no experience related to having to obtain licensing in their particular field or with the Consortium. (Interviewees #5, 6, 7, 11, 13, 14, 19, 20, 21, 28, 29, 49).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he has no experience with licensing issues relating to the Consortium projects.

**Some interviewees reported mixed or negative experiences regarding licensing (Interviewees #37, 57).** Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that his experience with licensing has varied depending on the particular project. Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that their experience obtaining licensing was horrendous and time-consuming.

## VIII. Experiences with Payment

### A. Consortium anecdotes regarding experiences with payment

The following anecdotes regarding experiences with payment were obtained from interviews that the study team conducted in in connection with BBC's 2009 Consortium study.

**The interviewees who worked on Consortium projects generally reported positive experiences being paid by the Consortium directly. (Interviewees #3, 9, 11, 12, 16, 17, 18, 19, 22, 23, 24, 26, 28, 30, 33, 36, 37, 38, 42, 44, 48, 49, 53, 55, 57, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that in general his experience being paid by the Consortium directly has been pretty good — better than some private sector firms. He explained that the Consortium has recognized that in both the private and public sector prime contractors have a certain period under the contract for payment. The prime contractor would get paid but would not timely pay the subcontractor. As a result, the Consortium now requires payment to the subcontractor and actually places this requirement in the contract.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that none of his projects for the Consortium show up on their "late list."

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that her experience being paid by the Consortium directly is "awesome." She stated that Orange County pays on time.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has had an "excellent" experience being paid directly by OCTA; he reported that OCTA is the only agency with whom they are contracting as a prime contractor. He stated that OCTA pays them within 30 to 45 days.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that L.A. County MTA is fast with its payments and companies can negotiate payment terms when working with the agency.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that payment by the Consortium entities has largely been fine.

Interviewee #17 recalled one instance where there was a problem with payment retainage, but she didn't understand the requirements since she was only providing professional services.

Interviewee #19, an MBE-certified African American male attorney, stated that being paid by the Consortium directly is "not bad."

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that direct payment by the Consortium has been timely.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that her experience being paid by the Consortium directly — on the Gold Line lightrail project — was great.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he only had two late payments over 20 years. He stated that he has had a positive experience being paid by the Consortium.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he had a good experience being paid by the Consortium directly and it was on time.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that direct payment by the Consortium has been "decent and fair."

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had a positive and timely experience being paid directly by the Consortium; she was paid within sixty days.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has had a positive experience being paid by the Consortium directly.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that MTA's payment system is very timely.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, reported that direct payment by the Consortium has been fine and typically she received payment in 30 days.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he worked on a Consortium project a long time ago and had a positive experience relative to receiving payment.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that his experience being paid by the Consortium was okay; he did not have any complaints.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported receiving timely payment on Consortium projects.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, reported that the timing of payment was just okay.

**A few interviewees reported some issues in being paid by the Consortium directly. (Interviewees #10, 13, 14, 20, 46, 51).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they have had one bad experience that is going on right now. Interviewee #10 explained that the Consortium wanted them to start the work in FY 2008; because they completed the work in FY 2009 they had to revise the task order proposal to include their new rates but their invoice has now been outstanding for two months and they have not received any feedback from the Consortium and the work is complete; they attributed this to poor communication. Prior to this experience, payment by the Consortium has been "fantastic."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has had to wait from between six months to in excess of one year to receive payment from the Consortium although recently payment has been timely.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, indicated that he has had mixed experiences being paid by the Consortium directly — "some good and some bad" — and that it is dependent upon the management of the project and the given year. He stated that he has had good experiences with being paid when the project manager is someone who listens and is knowledgeable about the project. He stated that he has had bad experiences with being paid when the manager is not qualified to manage the invoice and will either refuse to pay on the invoice or will discount it without speaking first with the contractor.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that some Consortium agencies are better than others in terms of payment. She stated that some agencies pay right away while others will not pay for 130 days. She stated that this is very painful for a small firm and she needs to pay her employees. She stated that she sometimes needs to call the Consortium agencies to obtain payment but payment is then forthcoming.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that direct payment is getting better but it used to be pretty bad.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that direct payment by the Consortium was extremely slow.

**Some interviewees reported issues with respect to being paid by prime contractors on Consortium projects. (Interviewees #3, 9, 13, 14, 16, 17, 22, 25, 26, 27, 30, 33, 34, 36, 37, 38, 39, 40, 45, 50, 51, 52, TA #1).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he does not have any experience being paid by a prime contractor on Consortium projects, but as a prime contractor on Consortium projects, his experience was that he would make sure that subcontractors were timely paid. He did hear of situations in which subcontractors were not timely paid.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that being paid by prime contractors on Consortium projects can be very poor. He described recent instances of payment being "years late." He stated that late payment depends on the financial condition of the

prime contractor or the poor performance on the part of the prime contractor. Interviewee #9 stated that if the prime contractor does not pay them they will contact the agency to determine whether the agency has paid the prime contractor. They will then let the prime contractor know that they know they have been paid and that has been effective in the past.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that a prime contractor once refused to pay him on an L.A. MTA project because the L.A. MTA was refusing to pay the prime contractor for certain work unrelated to Interviewee #13. He stated that L.A. MTA stepped in and did "a great job" resolving the situation. Interviewee #13 also noted that the City of San Francisco has a prompt payment clause in their contracts which requires the prime contractor to pay the subcontractor within 10 days of being paid or they are required to pay interest. Interviewee #13 stated that on an OCTA project, the prime contractor "sat on" the invoice for two weeks and then OCTA "sat on" the invoice for an additional nine weeks before requesting additional work.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that payment by prime contractors directly is generally horrible, and the same can be said for non-Consortium agency payments.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that payments by prime contractors on Consortium projects have been problematic only a couple of times to the point that it became a headache.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her experience being paid by prime contractors on Consortium projects is dependent on the prime contractor.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated the payment by prime contractors has been a problem due to the delay in payment. He stated that there have been cases when he learned informally that the prime contractor had been paid but had delayed paying him. He stated that he was reluctant to bring the matter to the attention of the Consortium because it could adversely impact his relationship with the prime contractor.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has had a horrible experience being paid by prime contractors on Consortium projects – sometimes in excess of 90 days.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that payment by the prime contractors on Consortium projects is generally difficult.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that sometimes it takes a lot to get his money from prime contractors on Consortium projects.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that payment by prime contractors on Consortium projects is "hit or miss." She stated that her firm tries to save money in the good months so that they will have money in the slow months.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that payment by prime contractors on Consortium projects can be "very dicey" and stated that she has been paid late.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had a negative experience being paid by a prime contractor on a Consortium project; she never got paid on time and the late payment was difficult for her small business to handle.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has had a negative experience being paid by prime contractors on Consortium projects. He stated that often, his firm is literally financing the project and this is extremely difficult for small to mid size firms. He stated that he is doing well if the prime pays within 120 days.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that payment has been very slow in some instances which is extremely hard for a small firm to carry.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that although her last experience being paid by a prime contractor on a Consortium project was many, many years ago, she does recall receipt of payment being a very slow process.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that payment by prime contractors on Consortium projects has been late all the time and very slow.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the process of being paid by prime contractors on Consortium projects was very timely and still very slow.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that his firm had a difficult time being paid by a prime contractor on a Consortium project; the process was very slow. He reported that they turned in their billing in February but did not receive payment until May.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that payment by prime contractors on Consortium projects is even worse than direct payment by the Consortium (which he described as extremely slow).

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that they went into a 30-day contract and ended up being paid within sixty 60 to 90 days; it was difficult for his firm.

TA #1, the President of the Latino Business Owners of America, stated that he has not heard any "horror stories" lately about members' experience being paid by a prime contractor on Consortium projects. He stated that the issue is accountability. Prime contractors get paid and often do not tell subcontractors and there are no checks and balances to ensure that the subcontractor is timely paid. Subcontractors have to be prepared to complete their scope of work before receiving payment. He

stated that San Diego tried to establish a reporting process that required simultaneous notice to a prime contractor and a subcontractor. The process was used for a while. TA #1 stated that the last time he heard of a prime contractor getting paid and failing to notify or timely pay the sub was last year.

**Other interviewees reported no issues being paid by prime contractors on Consortium projects. (Interviewees #10, 12, 14, 18, 20, 23, 24, 28, 31, 43, 46, 48, 49, 57).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated they have not had any issues with being paid by a prime contractor on a Consortium project.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that recently he has had a good experience being paid by prime contractors on Consortium projects, but that is because contractually the prime contractors must pay DBEs within a certain number of days. He is currently involved on a large L.A. County MTA project and the prime contractor is paying them quickly. He stated that if they ever have a cash-flow issue because the prime contractor is not paying them quickly, he will call them and the prime contractor will issue a check — "it has been that good. It is amazing; I have never seen that before."

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has had good experiences being paid by prime contractors on Consortium projects.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that payment by prime contractors on Consortium projects has been timely.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has never worked on a Consortium project under his own license, but he has had experience being paid by a subcontractor of a prime contractor on a metro project. He said he did not have any problems getting paid on that project. He questioned whether it was because his role on this job was that of an employee and the employer just did whatever it took to get payroll paid or if it was just a well run operation where everybody got paid on time. He could not give a definite answer primarily because he was not involved in that manner on this project and did not know the logistics of how that operation worked itself out.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that he had a pretty fair experience being paid by prime contractors on Consortium projects.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that payment by prime contractors on Consortium projects is dependent on the prime contractor; he cited one prime contractor who for example pays within sixty days.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that his experience being paid by prime contractors on Consortium projects was okay; he did not have any complaints.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported having received prompt payment from prime contractors on Consortium projects.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported timely payment by prime contractors within contract parameters on Consortium projects.

**Some interviewees reported having no experience being paid by the Consortium directly or through a prime contractor. (Interviewees #1, 2, 4, 5, 6, 7, 8, 11, 21, 35, 47, 54, 56, TA #1, 2).** TA #1, the President of the Latino Business Owners of America, had never been paid by the Consortium directly and could not relate the experience of his members with being paid by the Consortium directly.

TA #2, the President of the Black Contractor's Association, stated that he does not know what his members' experiences are being paid by the Consortium directly, but stated for those who are paid by Caltrans, members would opt to be paid directly by the agency rather than the prime contractor because they are more apt to get paid within the 30 day billing period when paid directly by the agency.

**Some interviewees reported positive experiences being paid by prime contractors on private sector projects. (Interviewees #8, 13, 18, 20, 22, 28, 29, 31, 37, 49, 51, 56, TA #2).** Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that payment by prime contractors in the private sector is "excellent."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has had a very good experience being paid by a prime contractor on private sector projects.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience being paid by prime contractors in the private sector, but stated that is due to the caliber of prime contractors that he does business with.

Interviewee #29, an African American male-owned electrical contractor, stated that he has had positive experiences being paid on private sector projects. He stated that he makes arrangements to have his money available at the end of the project or upfront as segments of the project are completed.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that in the private sector he typically has goals on his projects which dictate his pay schedule. He feels this makes it easier for him to get paid because the prime contractor can see the results.

Interviewee #37, an African American male owner of a SBA certified architecture firm, stated that he has had a positive experience being paid by prime contractors on private sector projects.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that payment by prime contractors in the private sector is fairly prompt; at the very least he has been paid in accordance with the agreed upon terms.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that payment by prime contractors on private sector projects has been good and prompt.

TA #2, the President of the Black Contractor's Association, stated that in the private sector, subcontractors receive timely payment according to their contracts with the prime contractor.

**Some interviewees reported negative experiences being paid by prime contractors on private sector projects. (Interviewees #11, 12, 14, 15, 23, 30, 33, 36, 38, 39, 43, 45, 52, 57).** Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she did have a problem at one point in time being paid by prime contractors on private sector projects; she identified a lack of funds as a the source of this problem.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated the payment in the private sector has been "terrible," so much so that they are no longer interested in pursuing work in the private sector. He stated that with new or questionable clients they request a 30 percent retainer.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has not always had good experiences being paid by prime contractors on private sector projects. He stated that they are currently working on a contract out-of-state and the prime contractor is two to three months behind on billing; this has caused the prime contractor to be three to four months behind on paying the subcontractors. He stated that when the prime contractor is "not sharp" the subcontractor will suffer.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported that payment by prime contractors on private sector projects is slow and often problematic. Many times, Interviewee #15 reports requirements of releases, signatures, etc. for vendors and payment — there is much more paperwork in the private sector.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, reported that payment from prime contractors in the private sector is usually late.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that his experience being paid by prime contractors in the private sector is about the same as on Consortium projects; he stated that sometimes it takes a lot to get his money.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that her experience being paid by prime contractors in the private sector has not been too good. She stated that "if the prime does not get paid, we do not get paid." She stated that payment in the "old days" was better in that you could depend on getting paid within 60 to one hundred 100 days.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had difficult experiences getting paid by prime contractors on two private sector projects; they claimed they had to wait to get paid.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that payment in the private sector has been very slow in some instances, which is very difficult for a small firm to carry.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that payment by prime contractors in the private sector has also been slow.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that in his experience prime contractors on private sector projects have been slow to make payments, which is difficult for small businesses.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that payment by prime contractors on private sector projects is very slow.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported that they have experienced late payment by prime contractors in the private sector.

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, stated that payment by prime contractors in the private sector varies a great deal and is dependent upon the contractor; he stated that some firms are slow and others are just okay.

**Other interviewees reported mixed experiences being paid by prime contractors on private sector projects. (Interviewees #1, 2, 4, 9, 27, TA #1).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that in the private sector, 90 percent of the prime contractors pay them on time; the other 10 percent drag out payment or state they will pay when paid. He stated that in the public sector, the prime contractors also agree to pay when paid.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that architects in general in the private sector often default on payment; developers and owners are very good in paying, and with the exception of the current economic crisis, generally pay on time. Interviewee #2 said that he has heard from other consultants that they are paid in a timely manner on public sector projects.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that the only difference in being paid by the prime contractors on private sector projects is that he dealt directly with the developer or owner or contractor so it is a direct one-on-one relationship whereas in the public sector there is another step involved. Interviewee #4 has to submit his invoice to the prime contractor and then the prime contractor incorporates it into their invoice and it goes to the client. As a result, Interviewee #4 stated that it takes longer to get paid in the public sector but on the other side, with the private sector, he explains that you always have the risk of the client you are working for going bankrupt or disappearing and never collecting your money whereas in the public sector you know you will get paid; it is just a slow process.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that payment is the same in the private sector as it is in the public sector. He stated that when a problem arises it is more difficult to remedy it. He stated payment was okay up until the beginning of this year; he stated that the economy has now affected payment.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, reported that payment by prime contractors on private sector projects has been both positive and negative — you either are paid quickly or not at all.

TA #1, the President of the Latino Business Owners of America, stated that the trend in the private sector is that there is a much tighter relationship between the subcontractors, prime contractors, and owners; payment and timing of payment is negotiated so that these problems are not as prevalent in the private sector.

**Some interviewees reported no experiences with being paid by prime contractors on private sector projects. (Interviewees #16, 40, 44, 47, 48, 50, 54).**

**Several subcontractor interviewees reported that timely payment by prime contractors is an issue "throughout the industry" and across the private and public sectors. (Interviewees #5, 7, 21, 22, 37, 52, TA #2).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that receiving payment is a problem throughout the industry. He stated that his company is currently having problems with prime contractors on city projects because the prime contractors want to pay the sub-consultants when the prime gets paid. Interviewee #5 stated that because his contract is with the prime contractor and not the prime contractor's client, he feels that his company should be paid when the work is completed. Interviewee #5 stated that this is an industry-wide problem, but it has nothing to do with being a DBE or the Consortium; it is a sub-consulting issue.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that in general all subcontractors have a tough time obtaining payment from prime contractors on both private sector and public sector projects. He stated that many times owners do not pay on time and in most cases the prime contractor will not pay subcontractors until the prime contractor is paid.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that her experiences with receiving payment have varied; she stated that some experiences were awful and one incident almost put her out of business. She stated that "thankfully" the federal government now has a "prompt payment act" for small businesses where she is paid within 30 days. She stated that there is similar legislation under California law.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the barrier to receiving payment is late payment by a prime contractor.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that the lack of enforcement of the agreed payment schedule is a barrier to receiving payment. He stated that there is no one making sure that prime contractors pay their subcontractors within a certain time period.

TA #2, the President of the Black Contractor's Association, stated that the experience of being paid by a prime contractor on public projects varies depending on the prime contractor and the relationship between the prime contractor and the subcontractor. He stated that some subcontractors may be timely paid (within the 30-day billing period or even sooner) if the subcontractor has a good relationship with the prime. He stated that it is a problem when prime contractors get paid and there

is no way that subcontractors know. He stated that some agencies have tried to make prime contractors inform subcontractors when they are paid, but the practice of not informing the subcontractors is rampant. Generally, his members try to stimulate their own commerce among businesses in the private sector rather than to rely on public work.

**Some interviewees identified paperwork and related issues as a barrier to receiving payment. (Interviewees #8, 9, 13, 14, 16, 17, 27, 30, 35, 37, TA #1).** Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that in the non-Consortium public sector, the notice of completion is not always known to the subcontractors or the project manager; this he says is a barrier to receiving payment.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, identified the rejection of invoices for "trivial reasons" like leaving off an expense as a barrier to receiving payment; he was not sure whether that had ever happened with one of the Consortium member agencies.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, identified agencies' failure to timely review invoices as a barrier to receiving payment. Interviewee #13 stated that on one occasion L.A. County MTA was in the process of installing a new bidding system; payment was delayed for two months because the system did not work.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the biggest barrier to receiving payment is that often they are working with a procurement agent dealing with an engineering contract that is not geared toward the type of billing that they use in the marketing area. He stated that billing for marketing often covers intangible items, but the procurement agent will request his company to adapt their billing to a more tangible format.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that sometimes paperwork issues preclude fast payment, and also stated that all paperwork must be filled out correctly to receive payment.

Interviewee #17 stated that payments are subject to a lot of scrutiny before they are made, and if there were any barriers to payment it would be a covert not an overt action.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that it takes forever to get contracts approved.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that sometimes the procedures and paperwork associated with payment can be quite tedious; if one item is missing it can push back his payment on projects and work being done.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, felt that a major barrier to receiving payment is the payee's lack of payment technology.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, identified paperwork as one barrier to receiving payment.

TA #1, the President of the Latino Business Owners of America, stated that there are a number of barriers to receiving payment, including excessive paperwork, failing to complete paperwork on time, not meeting the expectation of the prime contractor, and the client not being satisfied.

**Some interviewees identified the owner/client's failure to pay the prime contractor or failure to approve a project as a barrier to receiving payment. (Interviewees #12, 23, 33, 56).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that a common barrier to receiving payment is when the ultimate client does not pay the prime contractor and then the prime contractor cannot pay the subcontractor. Interviewee #12 stated that another barrier is when the client does not approve the project. Interviewee #12 stated that he was recently a subcontractor to an architect who had two contracts with a school district; they were attracted to assist on this contract because the school district guarantees payment within 30 days. However, it turned out that that meant payment within 30 days of project approval which took over a year; he stated this was "gut-wrenching."

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that the impediment to receiving timely payment in the private sector is due to the fact that the prime contractor is usually waiting to be paid.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that the only barrier to payment is when the prime contractor does not get paid.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, noted that they have encountered issues being paid by the average customer although they have received payment in the end.

**Some interviewees identified various other issues with respect to the prime contractor that act as a barrier to receiving payment.** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that the prime contractor's lack of adequate financing is a barrier to receiving payment.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that delay on the part of the prime contractor is a barrier to receiving payment.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has read books and gone through classes on financing projects and he makes sure that his people get paid. He stated that he had an issue getting paid on a HUD project in which he blew the whistle on a crew that was doing his work after hours. This was an incident in which he was a subcontractor, but he told on the prime contractor who was taking away his work after hours and on weekends against the rules because he would have received time and a half on this work and they were likely getting much less.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that people are supposed to pay you for work delivered but that no one is watching the prime contractors to make sure that they pay their subcontractors. She stated that if she complains then she runs the risk of losing future contracts.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that the only barrier to receiving payment is unexplained late payment.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that prime contractors want to pay their subcontractors last; they do not follow the Prompt Pay Act set forth in the C.F.R.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that the process to receive payment is slow and cumbersome. He stated that there should be some sort of checks and balances system in place that would allow subcontractors to receive payment directly from the project owner instead of having to rely on payment from the prime contractor

**Most interviewees reported no barriers to receiving payment. (Interviewees #2, 3, 4, 6, 10, 11, 15, 18, 19, 20, 21, 24, 26, 28, 29, 34, 38, 40, 42, 43, 44, 47, 48, 49, 50, 53, 54, 55, 57, 58, TA #2).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, did not think that there are generally any barriers to receiving payment, but noted that one "methodology" for delaying a payment is to reject an invoice, whether because of the format or otherwise.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, did not identify any barriers to receiving payment and did not feel as though her race, ethnicity, or gender has ever affected her ability to receive payment.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she was aware of barriers to receiving payment, but she could not specify any time in which she experienced such a barrier.

TA #2, the President of the Black Contractor's Association, stated that there are generally no barriers to receiving payment. He stated that if a contractor is qualified, he is usually paid unless there are issues of nonperformance or workmanship disputes.

**The majority of interviewees reported that their race, ethnicity, or gender does not affect their ability to receive payment. (Interviewees #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 35, 38, 39, 42, 43, 44, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, TA #1, 2).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he cannot specifically say that race, ethnicity, or gender has ever affected any business's ability to receive payment, but thought that all minorities could say that it has at some point. He stated there would be no EEOC and agencies of that nature if there were no problems.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated he does not feel that the race, ethnicity, or gender of a business owner affects the business's ability to receive payment. He stated that the quality of work is much more a factor than race, ethnicity, or gender.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she did not feel that race, ethnicity, or gender has affected her ability to receive payment. Sometimes it is late, but that is not a result of discrimination.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that the size of his firm affects his ability to receive payment more so than race or gender.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that his race, ethnicity, or gender may have affected his ability to receive work, but not to actually receive payment.

TA #1, the President of the Latino Business Owners of America, stated that he does not think that race, ethnicity, or gender affects his members' ability to receive payment. He stated that prime contractors "play games" no matter who the subcontractor is.

TA #2, the President of the Black Contractor's Association, stated that he does not feel that race, ethnicity, or gender has ever affected a business owners' ability to receive payment.

**Some interviewees reported feeling that their race, ethnicity, or gender has affected their ability to receive payment. (Interviewees #25, 34, 36, 37, 40, 45, 50, 51).** Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, reported feeling instinctively that his race, ethnicity, or gender may have affected his ability to receive payment. He stated that he does not believe Caucasian-owned firms have the same problem being paid.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, does feel as though her gender has affected her ability to receive payment. She believes that some large firms may not have paid her due to her gender. She stated that she had no concrete evidence of this, but instinctively felt it to be the case. She believes that her gender has affected her business relationships generally and in addition to payment issues.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that indirectly she believes that her race or gender has affected her ability to receive payment, but it is nothing that she can prove.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he knows beyond the shadow of a doubt that race has affected his ability to receive payment.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported feeling as though his ethnicity may have affected the timeliness of his payment on one Consortium project. He stated that he turned in his billing in February, but was not paid until May while the other subcontractors were paid a month before that.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, felt that his race has affected his ability to receive payment, but could not identify any experience that has lead to this belief.

**A couple of interviewees did not know whether their their race, ethnicity, or gender has affected their ability to receive payment. (Interviewees #14, 46).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, did not know whether race, ethnicity, or gender has affected his ability to receive payment.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he would never know whether his race, ethnicity, or gender would affect his ability to receive payment because "you do not know what people say about you when the door closes."

**Recommendations related to payment**

**One interviewee recommended that the Consortium streamline payment procedures. (Interviewees #20).** Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the Consortium should streamline the paperwork associated with the submittal and invoicing process. She stated that completion of paperwork can be a huge time-consumer and paperwork could be a barrier to some businesses. She stated that it is hard to stay up every night working on paperwork that can sometimes take five days to complete. In addition, these are five down days with no productivity. Interviewee #20 stated that her paperwork has been kicked back because of one easily corrected, minute error. She stated that it is essential to teach companies about paperwork to keep them out of the paperwork conundrum.

**Some interviewees recommended the Consortium monitor payment to subcontractors. (Interviewees #33, 36, 51).** Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated the Consortium should visit worksites to monitor DBE utilization and pass out questionnaires asking if they have been paid and the amount. She stated that the Consortium should make sure that the system is not abused or manipulated and should ascertain whether the subcontractors are being paid as set forth in their contract.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that subcontractors need to get paid in a timely manner and this needs to be monitored. She stated that there are a few instances in which she never was paid but she still had to pay all of her people. She would like to see some sort of quality control in place where subcontractors can go to get their grievances resolved, although she worries that complaining would keep her from getting future business.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, recommended that the Consortium should do more research and checking up on prime contractors and should create contract requirements to monitor payment of subcontractors.

**Some interviewees recommended that the Consortium become involved when a prime contractor does not pay its subcontractors within a reasonable time frame. (Interviewees #22, 25).** Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that there needs to be a better system in place to make sure that prime contractors pay subcontractors within a certain time frame. He stated that a small firm cannot maintain their day to day operations without capital.

**Some interviewees made other recommendations related to payment and compensation.** Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the Consortium should implement a stipulation that companies submitting proposals with fair rates should get the contracts over companies submitting proposals with "slave rates." Interviewee #50 reported that a prime contractor told him that if he wouldn't work for such a low rate he would find a subcontractor that would. In addition, he stated that it is not fair to be required to perform 50 percent of the work for only 25 percent of the compensation.

### B. SDCRAA anecdotes regarding experiences with payment

The following anecdotes regarding experiences with payment were obtained from interviews that the study team conducted in in connection with BBC's 2009 SDRCAA study.

**Payment by prime contractors, public agencies, or private sector clients**

**Some interviewees reported positive experiences with getting paid by prime contractors or public agencies.** Interviewee #SD11, representing a Caucasian male-owned firm, indicated that his firm has never had issues with agencies paying them. As an example, he said, "The city just paid us in 7 days." Interviewee #SD11 went on to say that his firm has never had any issues paying their subcontractors, and that it is their policy to pay their subcontractors within seven days of getting paid themselves. He said that any delay in paying subcontractors is due to delays in receiving payment from the agency: "Our problem is that we are waiting up to 60 days to get paid from the public agency which might slow down the payment time."

Interviewee #SD2, representing a Caucasian female-owned firm, also has had good experiences getting paid on projects. She said that the only difficulty comes when the project goes considerably beyond the original estimate. Interviewee #SD22, representing a Caucasian male-owned firm, also reported experiencing no issues related to payment.

Interviewee #SD45, representing a Caucasian male-owned firm, said that receiving payment in atimely manner is "always, always a problem." In describing the differences between receiving payment in the public and private sectors, Interviewee #SD45 commented, "Payment may be slow in the public sector, but it is guaranteed. You need a gun to get paid in the private sector."

**Several interviewees complained that prime contractors or agencies often pay slowly in the public sector.** Interviewee #SD14, representing a Hispanic American male-owned firm, said that there are "always" agencies and prime contractors that pay slowly. He explained that slow payment is especially problematic now because of the recession. Interviewee #SD20, representing an Asian American male-owned firm, expressed a similar sentiment: "[Slow payment] happens all the time! I would like to see some sort of contract clause between the primes and agencies [so that the prime contractor], within 10 days of getting paid, has to pay the subs."

Interviewee #SD16, representing an African American male-owned firm, reported that slow payment is a negative aspect of doing public sector work: "It is hard to get paid." He went on to say that slow payment becomes particularly difficult in times when his firm has limited capital.

Interviewee #SD18, representing a Caucasian female-owned firm, indicated that payments from public agencies take between 60 and 90 days, longer than payments from private entities: "The

difference between public and private agencies is the decision making process. The public sector takes a long time to make decisions."

Interviewee #SD19, representing a Caucasian male-owned firm, reported that "Fifty percent of payments [from public agencies] take over 120 days …" She went on to say that when her firm works as a prime contractor payment tends to be faster than when they work as a subcontractor. Regarding her firm's payment experiences as a subcontractor, Interviewee #SD19 said, "We may have finished our piece of the job, but [if] the prime contractor is not on schedule, […] we don't get paid until the job is complete." She continued, "There are cases where we did not get paid at all."

Interviewee #SD37, representing a Caucasian male-owned firm, indicated that his firm prefers to work as a prime contractor, because there are too many payment issues associated with subcontractor work: "The company doesn't have to worry about getting paid when [it is] the prime. We are currently working with a general as a subcontractor and have been working with them for over a year, and we practically have to dig our money out of them." He went on to say that sometimes his firm will simply forego payment from general contractors, because pursuing legal action against them is too expensive.

Interviewee #SD33, representing a Hispanic American male-owned firm, reported that payment issues are prevalent on construction projects, because prime contractors often delay payments because of "re-do's or go-backs." He went on to say that small firms are more likely to be affect by slow payments and that "it's sometimes 60 - 90 days out before the initial payment on a new project is received." Interviewee #SD36, representing an African American male-owned firm, said, "Always with [public agencies] you can count on a 60, 90 or 120 day pay period. That will affect you if you don't have the foundation to pay people on time."

SDTA #2, representing a Hispanic American trade organization, and Interviewee #SD25, representing a Caucasian male-owned firm, both also reported that payments from public agencies take anywhere from 60 to 90 days. SDTA #2 indicated that payment delays that are longer than 90 days are usually the prime contractor's fault and not the agency's.

Interviewee #SD24, representing a Caucasian male-owned firm, reported that payment to subcontractors is often delayed because of the processing that is required on the part of the prime contractor, or because the agency rejects one or more payment invoices.

Interviewee #SD3, representing a Caucasian male-owned firm, explained that there is typically a 10-week lag between the start of a public agency project and the first payment. He said that the time that it takes to get paid is almost twice as long for subcontractors than for prime contractors. Interviewee #SD3 remarked that because of payment delays, it is crucial for firms to have a good line of credit.

Interviewee #SD28, representing a Caucasian female-owned firm, said that slow payment is "always" an issue. She explained that both public and private entities are typically taking "at least 120 days right now" to pay contractors. She went on to say that because her firm is usually not the biggest firm on a project, its payment concerns are not as high on the prime contractor's priority list. She said, "We don't have as much pull [to demand quicker payment]."

Interviewee #SD35, representing an Asian American male-owned firm, reported that he used to own another firm that went into bankruptcy, primarily because prime contractors refused to pay his firm:

"… we couldn't get paid from several of our primes." Interviewee #SD35 indicated that one prime contractor in particular put his former firm out of business: "They would always come up with some reason why we weren't getting paid on time. Usually, it was the paper work. In the last days of [the firm], [the prime contractor] owed $180,000. [The prime contractor] put us out of business." Interviewee #SD35 indicated that his previous problems with payment have made him hesitant to take on subcontractor roles with his current firm.

Interviewee #SD43, representing a Hispanic male-owned firm, said that slow payment is often an issue, but it is especially difficult for firms working in the public sector. She explained that in her experience, public agencies can take anywhere from three to four months to pay contractors. She said that in the private sector it only takes a couple of weeks to receive payment.

Interviewee #SD46, representing an African American male-owned firm, reported that a prime contractor withheld payment for more than 60 days on a public sector project with which is firm was involved. Interviewee #SD46 said that it would be helpful if agencies posted prime contractor payment data so that subcontractors would know when they could expect payment.

SDTA #9, representing a public works trade organization, explained that although payment issues are not as prevalent as they were in the past, they can still pose problems for small firms: "The payments have gotten a lot better than they used to be from public agencies, [but] the 60-90 days that it takes to get paid is difficult for small businesses." He went on to say that payment issues are much more common for subcontractors than they are for prime contractors.

**Several interviewees also complained of slow payment in the private sector.** Interviewee #SD21, representing a Caucasian male-owned firm, indicated that payment issues are a substantial barrier to working in the private sector as well: "One of the toughest parts of the business on the private side is just getting paid." He went on to say that not receiving payment in a timely manner (or at all) is a barrier to contractors' progress and growth.

Interviewee #SD5, representing an African American male-owned firm, reported several incidents in which he had trouble receiving payments from prime contractors in both the public sector and the private sector. He said that in one case his firm had to wait over six months to get paid.

Interviewee #SD34, representing a Caucasian male-owned firm, said that he is often given the "runaround" when getting paid by his clients. He said that he frequently has to follow up with them to get paid.

Interviewee #SD41, representing a Caucasian male-owned firm, reported that his firm has over $2 million in unpaid invoices from private sector clients that have gone bankrupt. He said, "We are in court now trying to litigate. … Getting paid is a big risk in the private industry. I would be happy getting 10 cents on the dollar right now."

Interviewee #SD44, representing a Hispanic male-owned firm, remarked that slow payment is often an issue with which all firms have to deal and indicated that the issue does not selectively affect MBE/WBE firms: "With every business you have [slow payment issues]."

**Some Airport Interviewees suggested that slow payment disproportionately affects small firms.** Interviewee #SD7, representing a Caucasian male owned firm, indicated that payments "aren't going to come when you think they are going to come." He went on to say that slow payments are "just a hiccup, not a show stopper" for large, well established firms but could be catastrophic for minority- or female-owned firms that are smaller and less established.

Interviewee #SD30, representing an African American male-owned firm, reported that slow payment is a barrier, particularly for a small firm. He explained that most clients typically pay contractors 30 days after receiving an invoice, but that delay makes it difficult for small firms to cover costs in the meantime.

Interviewee #SD31, representing a Caucasian male-owned firm, stated that slow payment is an issue for small firms on large projects, because they do not have the capital to cover upfront costs. He said, "Nobody is going to ship you a million dollars worth of [materials] without getting most of their money up front." And he went on to indicate that bridge loans are too expensive to be practical.

Interviewee #SD40, representing a Caucasian male-owned firm, reported that payment delays are difficult for small firms to handle: "The 60 to 90 day payment is difficult for small businesses. I love it when a guy calls and says I need my check." Interviewee #SD40 reported that his firm pays its subcontractors within 30 days. He said, "We take a lot of pride in making sure all of our paperwork is correct. We do what we call a pencil copy five days before the invoice is due to ensure our payment is on time."

Consistent with those comments, SDTA #1, representing a local chamber of commerce, reported that payment delays pose a substantial problem for small firms, because, relative to large firms, they have less capital.

SDTA #4, representing a local chamber of commerce, said that she has seen good, small firms struggle to make payroll as a result of payment delays.

**A few Airport Interviewees expressed a preference to work in a particular sector because of payment considerations.** Interviewee #SD16, representing an African American male-owned firm, stated that he prefers to work for large private clients, because he finds payments to be more secure: "I prefer to work for a large private company who I know pays their bills."

Interviewee #SD35, representing an Asian American male-owned firm, said that he prefers to work in the private sector to avoid payment delays: "I prefer private work, because you get paid sooner as opposed to the public. We also prefer to prime projects because of payment issues."

In contrast, Interviewee #SD 20, representing an Asian American male-owned firm, said that he prefers to work in the public sector, because, from a legal standpoint, payments are much more secure.

**Denial of payment based on race, ethnicity, or gender**

**Two MBE/WBE Airport Interviewees reported that their minority or gender status played a role in experiencing payment delays.** Interviewee #SD10, representing an African American male-owned firm, said that he has felt discriminated against when trying to be paid. He described a situation in which he was refused payment because of his minority status: "I had a guy from San Diego County call me because they were late for paying me for one of my accounts. He said the check was ready but insisted that I come to their offices to get it even after I asked multiple times for him to send it. The man at the County … insisted that he would leave the check at the front desk for me." Interviewee #SD10 ultimately agreed to pick up the check, but once he arrived at the front desk they made him go to another office to pick it up. Once he arrived at the second office, a Caucasian male who was holding his check asked him, "How did you get this contract?" Interviewee #SD10 said of the situation, "It got to the point that I couldn't get paid. I had to go to the city council to help me get my money. Once he saw the color of my skin he asked how I got the contract. This was with the County of San Diego about five years ago. He wanted to know how a black man got this opportunity. This is the nature of the business."

Interviewee #SD2, representing a Caucasian female-owned firm, also reported that she has been discriminated against in certain payment situations, albeit several years ago. She provided an example from 20 years ago when she needed payment from a prime contractor to make payroll. She said that she visited the prime contractor about receiving payment, and he told her that he was not going to pay her. She subsequently sent her husband to talk to the prime contractor, and he wrote her a check immediately.

**Payment recommendations**

**A few interviewees recommended that public agencies be more proactive in ensuring that subcontractors get paid in a timely manner.** Interviewee #SD20, representing an Asian American male-owned firm, stated that public agencies need to monitor how quickly prime contractors pay their subcontractors: "Make sure the prime pays the subs."

Interviewee #SD2, representing a Caucasian female-owned firm, suggested that public agencies follow Caltrans' example and list when they pay prime contractors on their websites. She indicated that access to payment information has made a substantial difference in terms of subcontractors being paid quickly.

Interviewee #SD35, representing an Asian American male-owned firm, suggested that public agencies (and the Airport in particular) play the role of watchdog to ensure that subcontractors get paid: "If a sub[contractor] is not getting paid by a government agency or their prime contractor, then the public agency, in this case the Airport, should become a watchdog for those small subcontractor businesses." He continued, "Not getting paid on time can break a business. …"

SDTA #5, representing a government advisory commission on minority issues, recommended that public agencies figure out a way to ensure that firms get paid quickly: "Cash flow is very important to small businesses with payroll, etc. [Public agencies] have to create ways for people to get paid quickly and on time. If [they] aren't sensitive to those needs these businesses will go under."

### C. Caltrans anecdotes regarding experiences with payment

The following anecdotes regarding experiences with payment were obtained from interviews that the study team conducted in in connection with BBC's 2007 Caltrans study.

**Payment by prime contractors**

**Several interviewees reported no problems with payment by primes on Caltrans projects (Interviewee # CT 68).** Some interviewees believed the Prompt Payment Act effectively forced prime contractors to pay in a timely fashion (Interviewee #CT39, CATA #2).

**Other interviewees reported that primes contractors frequently paid slowly.** Interviewee #CT65, a white male-owned business, and Interviewee #CT66, a white male-owned business, stated that "it takes some time for the money to make its way to the subs" and that this creates problematic "situations" regarding accounts receivable. As a general observation, Interviewee #CT49, an African American male-owned business, stated slow payment is a barrier to pursuing work in the public sector.

Interviewee #CT7, a white female-owned business, explained that sometimes payment is held up because there is a problem with a prime contractor's invoice, and that even though the problem or error may lie with only one subcontractors' component of any given invoice, payment to the other subcontractors is held up because Caltrans will not pay the prime contractor, thus holding up everyone else's money "until that one firm cleans up the invoice and resubmits it."

**Several interviewees believed that payment delays are attributable to the prime contractors and not Caltrans (Interviewees #CT10, and #CT40).** Interviewee #CT6, a white female-owned business, identified instances where prime contractors filed bankruptcy, changed their business name, and skipped out on payment obligations. Interviewee #CT16, a white male-owned business, noted that "being a subcontractor for a private contractor is probably the worst place to ever be in the business situation."

Interviewee #CT51, a Hispanic male-owned business, noted "sometimes in a bureaucracy government gets so screwed up and so many people have to touch everything that it delays getting paid to primes, and the primes consequently do not pay you until they get paid because that is . . . the law . . . ." Several contractors stated that prime contractors operate on a pay when paid system. Interviewee #CT33, a Hispanic female-owned business, stated, "Prime contractors usually don't pay their contractors until Caltrans pays them. So, if Caltrans pays them slowly, guess where subcontractors are? They're at the bottom of the line." Interviewee #CT39, a Hispanic male-owned business, stated that prime contracts get paid well before subcontractors.

Interviewee #CT49, an African American male-owned business, formerly performed subcontracting work, but because there were so many problems getting paid by prime contractors, the company ceased working in that capacity. This problem was also identified by CATA #2, an African American trade association, which indicated that a lot of subcontractors, including the association's members, who experienced problems getting paid by prime contractors, have to stop work because of these payment issues — it "hurts them" and "kills them." CATA #2 stated further that he knew of firms that were forced out of business due to delays in payment and the resulting impact on their financials. CATA #11, a minority trade association, stated that payment in the private sector varies, and that some owners pay quickly, while others take their time. CATA #11 also affirmed that counties and

cities are usually the slowest with payment, but that, unlike in the private sector, companies will eventually get paid. Interviewee #CT13, a Pakistani male-owned business, echoed that sentiment, and stated that he never has had any problems getting paid by other public agencies. He continued by stating that sometimes he had problems getting paid by prime contractors, but he attributed these problems to the nature of the industry, and that "[b]uilders like to hold on to money as long as they can."

Interviewee #CT39, a Hispanic male-owned business, did note that every now and then, his company runs into problems getting paid by prime contractors. According to Interviewee #CT1, a Native American male-owned business, payment by prime contractors is a "mixed bag, sometimes it's been very difficult." Interviewee #CT51, a Hispanic male-owned business, indicated that the "critical issue" is the delay in payment by/from contractors that are the result of Caltrans' and other public agencies' practices.

CATA #7, a Filipino trade association, indicated that "he has heard complaints from his members that the primes will get paid and not pass the payment onto [the various subcontractors]." This complaint was echoed by Interviewee #CT69, white male-owned business, who indicated that "primes want to hold onto the money as long as they can, and that sometimes the primes themselves are waiting for dollars to be released." CATA #2, an African American trade association, summarized the general theme of the interviewees statements – "you have to 'stay on [prime contractors]' and do your due diligence, and that '[i]f you stay on them, they'll pay you.'"

CATA #10, an Asian American trade association, stated another issue being paid by prime contractors is that subcontractors do not have any leverage. The Interviewee sated that the issue has been presented at many meetings with Caltrans, and that it is even worse for a second or third tier subcontractor. CATA #10 identified that this impacts the performance of the subcontractors and the cash flow of the small firms, which makes it very difficult for them to operate and at some times it has impacted whether the firm can survive or not.

**Several telephone interview respondents reported that gaining access to capital can be difficult.** MBE/WBE and majority-owned firms alike indicated that financing issues are prevalent in the public sector. For example, a majority-owned firm stated that it takes a great deal of capital to be successful in the public sector: "Save your money. Have money and experience — it takes a lot of money [to work in the public sector]. Just be knowledgeable in [the area of financing] and have the capital to do your work."

**Some telephone interview respondents said that bonding can be a barrier in the public sector.** Both MBE/WBE and majority-owned firms indicated that bonding requirements can be problematic when working in the public sector. For example, one MBE firm said that the difficulties associated with bonding deter his firm from bidding on public sector projects, "I would like it to be easier to acquire bonds. It is so hard, it discourages minority bidders like myself."

**A few telephone interview respondents indicated that insurance requirements can be a barrier in the public sector.** Most respondents that identified insurance as a barrier were MBE/WBE firms. For example, an MBE firm remarked, "Be prepared for contract requirements as far as insurance is concerned ¬— there are a lot of hurdles to do work with public agencies."

**Denial of payment based upon race**

**Only one of the DBE or M/WBE businesses interviewed stated it feels its payment had been delayed or denied due to the company's status as a disadvantaged-, minority-, or female-owned enterprises (Interviewee #CT31).** Interviewee #CT48, an African American male-owned business, stated that he did not feel that any delays in payment were the result of racism or other discrimination. Interviewee #CT1, a Native American male-owned firm, echoed that statement, noting that "[h]e does not think his race or ethnicity or the size of his business has been a factor in payment." CATA #1, an Asian American trade association, stated he did not know if race played a factor in slow payment situations.

CATA #3, a Hispanic trade association, stated that he knew of a Hispanic contractor that was forced to file for bankruptcy in the 1990s because he was not paid for work by prime contractors, as well as an [African American] owned firm that had problems getting paid by a prime contractor (on a non-Caltrans job) and had to fight the matter in court for some time. Interviewee #CT46, an Asian American male-owned business, stated he "did not feel that the slowness of contractors' payment or [an] incident where the company did not get paid was attributable to the company's being a DBE firm . . . '[i]t's just the way the business is.'"

CATA #10, an African American trade association, male-owned business, stated that he does not know whether race, ethnicity, or gender affect payment, although many times big firms will neglect the needs of smaller firms. The Interviewee stated that he does not know whether this is related to race, but most of the small firms do happen to be ethnic, small DBE firms.

**Reccomendations related to payment**

An African Amercian DBE consulting firm suggested that Caltrans publish payment to the primes on the website. "It's kind of an alert, oh, look, this guy got paid, he's got ten days to go and give me my money." (P.H. San Diego, 3/22/07).

An African American DBE trucking company who testified at a public hearing in San Diego suggests that Caltrans make it mandatory for primes to place a preliminary lien on a job to ensure prompt payment. He testified that "when we work for Caltrans or contractors . . . we pretty much bankroll the trucking for the company, and it takes 60 to 90 days to get our money . . . if we prelim [preliminary lien] it, I become blackballed, because contractors don't like trucking company to prelim the job . . . it's a lot of extra paperwork, but it protects me in getting my money." (P.H. San Diego, 3/22/07).

### D. Telephone interview anecdotes regarding payment

The following anecdotes regarding payment were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**A few telephone interview respondents indicated that slow payment from prime contractors and public agencies is problematic.** Both MBE/WBE and majority-owned firms indicated that receiving payment from prime contractors can be a time consuming process, particularly in the public sector. For example, one MBE firm indicated that payment is so slow in the public sector that the

firm does not typically bid on public sector projects: "It takes a long time for government jobs to pay so we usually do not take them."

## IX. Experiences with Financing and Bonding

### A. Consortium anecdotes regarding experiences with financing, bonding, and insurance

The following anecdotes regarding experiences with financing, bonding, and insurance were obtained from interviews that thste study team conducted in connection with the 2009 Consortium study.

**Some interviewees reported issues related to obtaining financing and bonding. (Interviewees #2, 7, 8, 15, 16, 18, 20, 21, 23, 30, 31, 34, 35, 37, 40, 43, 46, 48, 51, 52, 53, TA #1, 2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has had a bad experience attempting to obtain financing. He stated that he could not obtain approval for a $100,000-$200,000 loan though his credit score is excellent. He stated that the firm had no credit score. He was only able to obtain a $15,000 line of credit. Interviewee #2 stated he does not know why his business is unable to obtain financing other than that the business is new.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that money is an issue in terms of a DBE's ability to obtain financing. He stated that financing issues affect more DBEs because you have to have assets available to obtain a loan. Interviewee #7 stated, however, that bonding is an even bigger issue for DBEs. He stated that all public jobs require bonds. Contractors cannot work on Consortium projects without obtaining a significant bond. He stated if general contractors do not carry DBEs under their bond, it becomes a major issue for DBEs.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that the excessiveness of insurance requirements has discouraged him from trying to work with SANDAG. Interviewee #8 stated that other public sector agencies are bureaucratic and you need to understand that when working with them.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, reported difficulties obtaining financing in the early years because he had no credit history, but now that he is established, there are no problems to report. Interviewee #15, also noted problems with bonding that result from constant changes in job specifications with regard to bonding amounts required for various projects. Interviewee #15 does not understand how projects can be with the same agency, in the same area, with different bonding requirements; this did not make sense to Interviewee #15.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that obtaining financing has been very difficult. Interviewee #16 received a couple of loans from the SBA, and that has been positive. In the private sector, Interviewee #16 noted that financing is difficult because the banks want private guarantees for loans, especially for anything about a hundred thousand dollars. Interviewee #16 has not had any bonding experience.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, noted difficulty obtaining bonding, but stated that the problem was related to her company's size and not due to race, ethnicity, or gender.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that financing is hard as a small business owner — she stated that when the business is waiting for payment and has to carry the bills her FICA score will "take a hit" and then financing becomes even more difficult. She stated that unless a business has family money, there are no alternatives available to fill in cash flow; that is the reality of the marketplace. Interviewee #20 also indicated that the Consortium has recently required E&O Insurance which is very expensive ($7,000 per annum) and a waste.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that financing was very hard to obtain but did not provide further detail.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that there are barriers to obtaining bonding (but not financing). He stated that insurers will not bond a company unless they know it.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that sometimes there are barriers in obtaining financing such as receiving a line of credit. He stated that sometimes these are barriers that would keep him off of a project or keep him from getting awarded a project.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has had difficulties obtaining financing. This is a part of the reason why he is a disadvantaged business. He has had personal issues in the past that has affected his ability to receive financing on projects. It does not make sense to him when he is trying to make payroll and payments to rent equipment and has an outstanding history of making those payments as it relates to his business, but when it comes to obtaining financing for his work related projects, he has difficulty obtaining financing because of issues in his personal life. He stated that with respect to obtaining bonding, on a $1 million bond, 2.5 percent is required. He said that if he had that kind of cash available, he would not qualify for disadvantaged status. He feels that this is another way that small businesses are disqualified for projects.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that initially it was difficult for her to obtain financing because she had no credit history. She stated that it has become easier over time.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that start-up financing was difficult, and it was the biggest difficulty as related to financing.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that it is difficult to obtain bonding. He stated that bonds are larger than your financials will allow.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that it has been very difficult for him to receive bonding because of all of the applications and the "enormous" assets required. He stated that it worked out for him in the end, but that the asset requirement was well beyond what it would have cost him to do the job, which he believed does not make sense and is unreasonable.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, had not experienced any barriers with respect to obtaining financing. He stated that he had to obtain a bond once for a small amount and that was difficult because of the liquid assets that it required.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that obtaining financing is always difficult and a challenge. He stated jobs tend to be undercapitalized and more capital is needed than the job is typically worth.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that he had not encountered any issue obtaining bonding until recently. He stated that he was unsure whether it was economy or some other factor that has caused him some difficulties recently in this area. He stated that he has had an "okay" experience obtaining financing.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has experienced barriers in trying to obtain financing and noted that the qualifications are hard to meet and get approved. He stated that the requirements for bonding are even more outrageous than the ones for financing.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that the financial institutions and markets are in ruins now so it is very hard to obtaining financing and there are a lot of requirements. He stated that bonding is another problem and has been a nightmare. He stated that the requirement of up-front assets is an issue with obtaining bonding.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported that his firm maintains a line of credit and has for many years. He stated that once they got over the initial paperwork everything was fine.

TA #1, the President of the Latino Business Owners of America, stated that his members' ability to obtain financing is a directly related to their ability to collateralize. If members do not have assets to collateralize it becomes a problem for their business. Sometimes members get a bid which takes them out of their economic zone. Members have to have cash on hand to sustain the project and if they can not obtain money they cannot bid on a project. Interviewee TA #1 stated that "funding is crucial." Most members as a whole have been successful obtaining loans from banks, however, it depends on how well they manage their business credit and relationship with the banking institution.

TA #2, the President of the Black Contractor's Association, stated that most members have a hard time obtaining financing because most are undercapitalized and have limited resources. He stated that credit, lack of assets, lack of a steady flow of profitable jobs, and lack of an asset base to collateralize all affect a business owner's ability to obtain financing. TA #2 stated that members try to obtain bonding but many do not qualify for bonding because of lack of cash flow, lines of credit and no asset base.

**Some interviewees reported they felt as though race, ethnicity, or gender affected a businesses' ability to obtain financing or bonding. (Interviewees #7, 22, 23, 31, 37, 40, 46, 51, TA #1, 2).** Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he feels that race, ethnicity, or gender can affect a business owner's ability to obtain financing or bonding because of the potential lack of collateral.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that race, ethnicity, and gender have affected her ability to obtain financing or bonding and it is much harder for minorities to obtain financing than it is for Caucasian business owners. She stated that she has had a good experience obtaining financing and bonding, especially now, since she has been in the business for a long time and knows many of the players. She stated that for start-up companies there are barriers.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that his race is a big part of having been denied bonding.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he cannot put his finger on it, but believed that race or ethnicity affects his ability to receive financing or bonding.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, did believe that one or more of those factors did affect his ability to obtain bonding but he does not know how to prove it.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he felt that his race absolutely affected his ability to obtain financing. He feels as though his financials and credit are more closely scrutinized than a Caucasian-owned firm seeking credit.

TA #1, the President of the Latino Business Owners of America, stated that he believes race, ethnicity, or gender is a factor in a business owners' ability to receive financing or bonding, but cannot unequivocally state. He thinks that it goes back to the asset base.

TA #2, the President of the Black Contractor's Association, stated that race, ethnicity, and gender affects a business owner's ability to receive financing or bonding because demographically people are discriminated against because of a lack of capital.

**A couple of interviewees stated that they were not sure whether race, ethnicity, or gender affected a businesses' ability to obtain financing or bonding. (Interviewees #2, 35).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know whether his race or ethnicity has affected the business's ability to obtain financing. He said it could be the case or might not be.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that she did not know whether her race or gender has affected her ability to obtain financing because that has never been overtly obvious.

**Most interviewees reported that they did not feel as though race, ethnicity, or gender affected a businesses' ability to obtain financing or bonding. (Interviewees #1, 3, 5, 16, 20, 21, 24, 25, 26, 28, 29, 30, 33, 34, 38, 39, 41, 43, 44, 45, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he is not aware of his race, ethnicity, or gender having affected his ability to obtain financing or bonding. He stated that he understands that some people are "set in their ways."

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, was not aware of any circumstances in which race, ethnicity, or gender has ever affected a DBE's ability to receive financing or bonding.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, did not feel that his race, ethnicity, or gender has affected his ability to obtain financing but he wasn't sure. He felt that the economy affected his ability to obtain financing more so than race.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that her experience obtaining financing was okay and she did not believe that it was affected by her gender. She stated that generally if you have been in business for a long time and are in good standing it is easy to get financing.

**Other interviewees reported no issues related to bonding or financing. (Interviewees # 1, 3, 4, 9, 26, 28, 29, 37, 38, 41, 45, 49, 54, 55, 56, 57, TA #1).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that obtaining bonding was not too difficult. Interviewee #1 did not identify any barriers to obtaining bonding. Interviewee #1 is currently looking into obtaining financing.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, was not aware of any specific barriers to DBEs obtaining financing or bonding.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that once a company has been in business a few years and has a relationship with financial institutions and "they know you" there are no problems obtaining financing. Interviewee #4 stated, however, if you are new to the business it would be more difficult to obtain financing. Interviewee #4 stated that he has not had any problems in terms of obtaining loans from a bank. Interviewee #4 does not have to obtain bonding for his work.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that 10 years ago it was difficult to obtain financing but now it has gotten easier. She has not had any issues obtaining bonding or insurance.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that he has had a good experience trying to obtain financing. His company has rarely needed bonding.

Interviewee #29, an African American male-owned electrical contractor, reported no issues related to financing or bonding. He has used only the standard bonding of $12,500 that is required as insurance under the law.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has not experienced any barriers while trying to obtain financing.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has had an overall good experience obtaining financing and bonding with no problems to report.

Interviewee #41, an Asian-American male owner of a DBE/MBE-certified general contracting firm, stated that he felt the process to obtain bonding went smoothly.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he had an okay experience obtaining financing. He stated that he was asked to supply a business plan and collateral in order to secure the financing he needed.

Interviewee #54, a Caucasian male owner of a general contracting firm, reported that they have not experienced any barriers in connection with obtaining bonding or financing, and noted that his firm will often team up with developers allowing them easier access to financing.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, stated that because they are a large firm they have not had difficulty securing a line of credit.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, stated that obtaining bonding was relatively simple. He stated that "without any black marks on your record, you should not have any problems with obtaining bonding."

Interviewee #57, a Caucasian male-owner of a construction and landscape architecture firm, reported having an overall good experience obtaining financing.

TA #1, the President of the Latino Business Owners of America, stated that obtaining bonding is not as much of an issue as financing because in the last couple of years prime contractors are helping with bonding as a result of the problems that subcontractors faced due to the high costs of obtaining bonding.

**Several interviewees had no experience with bonding or financing. (Interviewees #2, 8, 9, 10, 11, 12, 13, 14, 17, 18. 19, 24, 27, 36, 39, 42, 44, 47, 50).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not have to obtain bonding in his line of work. He stated that he does have to obtain insurance but insurance has not been a problem.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, does not have experience with financing or bonding.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has not had much of a need to obtain financing. Interviewee #17 stated she's not a risk taker when it comes to money, just lots of risks otherwise. There was an issue when she first started the company, Interviewee #17 reported that it was difficult to get even a credit card in her name, but that was many, many years ago.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, has never had to obtain financing because all of her costs are labor costs, so she's able to keep her overhead experience low.

**Recommendations related to bonding and financing**

**One interviewee requested the implementation of training programs to assist with bonding and financing.** Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that he would like to see training and assistance in receiving bonding. He stated that he has been unable to receive bonding even with using his property as collateral. He stated that the bonding process needs improvement from city to state.

**Some interviewees recommended the Consortium relax bonding requirements for small businesses.** Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that it would be beneficial if small businesses did not have such huge bonds to meet because it makes it difficult for them to bid on a project if they do not have the money to meet the bonding requirements, even though the costs of completing the project are significantly less than the bond itself.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, recommended that the Consortium increase assistance with bonding programs to $5,000,000.00.

### B. SDCRAA anecdotes regarding experiences with financing, bonding, and insurance

The following anecdotes regarding experiences with financing, bonding, and insurance were obtained from interviews that thste study team conducted in connection with the 2009 SDRCAA study.

**Many interviewees reported that financing and bonding are barriers to success in the public and private sectors.** Speaking generally about doing business in California, SDTA #3, representing a local chamber of commerce, indicated that obtaining financing is generally very difficult in San Diego, particularly in the current market. She also stated that operating expenses are very high in the state of California: "It's expensive to do business in California. …" She listed workman's compensation, living costs, and utility costs as some of the reasons why operating expenses are so high.

Interviewee #SD16, representing an African American male-owned firm, described financing as "a large barrier." He continued, "It takes operating and working capital to be competitive. The money allows you to be visible. … If I had capital, I'd be better off." Interviewee #SD 16 explained that he applied for a loan in the past but was denied.

Interviewee #SD9, representing a Hispanic American female-owned firm, reported that obtaining a loan is very challenging for small firms and that the process is becoming stricter. She said that when her firm tried to get a loan they had to approach several different banks.

Interviewee #SD20, representing an Asian American male-owned firm, explained that credit is extremely tight in the current market and particularly so for small firms that are not well established. Regarding credit for smaller firms, he asked rhetorically, "If I am a bank, would I loan money to [someone] with no experience?" Interviewee #SD 20 went on to explain that the process of obtaining financing is also time consuming and requires a great deal of effort.

Interviewee #SD36, representing an African American male-owned firm, indicated that obtaining loans is difficult so he never attempted to do so: "I never went to the bank [for aloan]. I didn't even try because I know how that works. It just doesn't work for me, so I went ahead and [financed my business] myself."

Similarly, Interviewee #SD32, representing an African American male-owned firm, reported that financing is a substantial barrier that firms face, particularly those firms that are just starting out. He said, "You'd have to have a lot of cash in order to be able to get working, because most of these [banks] aren't giving credit lines unless you've really established yourself."

Interviewee #SD22, representing a Caucasian male-owned firm, said that financing is a significant barrier to working in the public and private sectors, particularly because profit margins are quite small.

Interviewee #SD28, representing a Caucasian female-owned firm, explained that financing is particularly problematic in the current market, because banks are not loaning money. She said, "[Financing] was hard before. I would say it's even harder — if not impossible — to get financing and financial help nowadays." Regarding bonding, Interviewee #SD 28 reported that bonding can be a substantial barrier in her firm's industry. She said that sometimes the bonding requirements actually exceed the value of a contract (e.g., a $7,000 contract requiring an $8,000 bond).

Interviewee #SD33, representing a Hispanic American male-owned firm, expressed concern about tight credit. He stated that it will be difficult for smaller companies to expand and purchase equipment, because lenders are making it more difficult to obtain loans.

SDTA #4, representing a local chamber of commerce, reported that access to capital is a significant barrier for small firms. She said that smaller firms tend to perceive the loan process as very difficult and that they are afraid to spend a great deal of time on it only to be rejected in the end.

Interviewee #SD5, representing an African American male-owned firm, stated that firms must have a good line of credit and a bond to be successful but that those things are difficult to obtain. With regard to bonding in particular, Interviewee #SD5 said, "Our bonding capacity is only half a million dollars. This doesn't allow us to be very competitive." He went on to explain that public agencies have large bonding requirements, which severely limit opportunities for smaller firms who do not have the bonding capacity to bid on that work.

Interviewee #SD21, representing a Caucasian male-owned firm, described the bonding process as "arduous." He said that, in his experience, public agencies in California require contractors to bond the full value of projects and thus it can be quite expensive. Consistent with those comments, Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that bonding is a substantial barrier to success. He said that bonds are more difficult to get — but are also more important to have — in construction compared to other sectors. With regard to the importance of bonding, he said, "Without a bond, you'll never grow."

Interviewee #SD31, representing a Caucasian male-owned firm, said that financing is a "very big barrier" in the current market. He indicated that it is very difficult to obtain loans, because banks are not lending money to contractors in most industries, his firm's industry being an exception: "If you're not in a sexy industry … don't even bother walking in the door." Interviewee #SD31 went on

to say that bonding is "probably the biggest issue" facing firms in San Diego. He explained that his firm does not bond — typically, the firm teams up with a third party that will bond on its behalf. He said, "I don't have $20 million to put aside for surety to use against to give me a bond. I've had to turn down jobs because of bonding."

Interviewee #SD38, representing a Hispanic male-owned firm, said, "Our biggest obstacle that we have seen is the bonding … it is really high. When you have jobs in the millions they want a certain percentage of bonding and that is money that is tough for us to put out."

Interviewee #SD42, representing a Caucasian male-owned firm, reported that financing is the biggest barrier that firms face in San Diego: "The biggest barrier is capital — having money to do what needs to be done to make money." He went on to exaplin that his firm had to get creative with financing: "I come from the spectrum of starting with little capital and putting together an organization. I have learned to creatively finance my previous businesses and now have the confidence to continue that."

Interviewee #SD43, representing a Hispanic male-owned firm, stated that financing is difficult, particularly for small firms: "For a small company, if you don't have the assets … financing is difficult." She went on to say that it is particularly difficult for minority-owned firms to obtain financing. When asked why she thought that was the case, Interviewee #SD43 responded, "I don't know … I don't if they're afraid that the people that [Hispanic-owned firms] hire aren't legal. I think that can have something to do with it." She explained that as a result of the difficulties associated with financing her firm only takes on jobs that they can afford to do with the capital that it has on hand.

Interviewee #SD44, representing a Hispanic male-owned firm, remarked that small firms (including MBE/WBE firms) have trouble competing with large firms because of capital restrictions: "[Minority- or woman-owned firms] aren't going to have the buying power of the big boys …."

Interviewee #SD45, representing a Caucasian male-owned firm, described bonding as a "big issue." He stated, "[Sureties are] only matching you dollar for dollar. You have to hock anything you have [to obtain a bond]. For subcontractors, it's probably impossible [to obtain a bond]."

Interviewee #SD47, representing an African American female-owned firm, said that her firm's bonding capacity limits growth and success. She indicated that currently, her firm's gross revenue substantially exceeds her firm's bonding capacity.

SDTA #2, representing a Hispanic American trade organization, said "Working with the public agencies is all about bonding ability. If you don't have any bonding capacity, you can't do work." He went on to explain that many minority and female-owned businesses simply do not have enough equity and assets to obtain bonds.

SDTA #7, representing a construction trade organization, indicated that most firms in the San Diego area are having trouble obtaining loans and bonds: "I would be surprised if [his organization's members] aren't having trouble with their bank, lines of credit, that sort of thing." With regard to bonding specifically, SDTA #7 remarked, "Bonding has been tough for quite a while. It's not let up. … "Those that have [bonds] can't increase them as easily. … Getting a bond will be much tougher [with the recession]." However, SDTA #7 indicated that troubles with bonding are offset to some

degree for smaller firms, because prime contractors "almost always" bond for their subcontractors, particularly in the current market.

SDTA #9, representing a public works trade organization, said that bonding serves as a large barrier to being successful in the public sector: "Public works requires three bonds: full performance bond, bid bond, and labor and materials bond, all of which tie back to ownership assets. If you are capable … that is not enough to get a bond." SDTA #9 said that he has not seen discrimination in bonding, only cases in which small firms do not have the assets to obtain bonding. He did say that the Airport is doing a good job in helping small firms with bonding.

SDTA #11, representing a veterans trade organization, indicated that, along with bonding, financing is the most substantial barrier facing small businesses in the San Diego area: "The biggest issues are financing and bonding." He explained that financing problems stem from the fact that small businesses have less capital than larger, more established ones. SDTA #1, representing a local chamber of commerce, agreed that, compared to large firms, it is much more difficult for small firms in San Diego to obtain a bond and to raise capital for operation costs and equipment.

**Several interviewees indicated that it is crucial to develop relationships with bankers in order to be successful.** Interviewee #SD3, representing a Caucasian male-owned firm, said that financing and bonding are two of the most critical elements of a firm's success. He indicated that a number of MBE and WBE firms fail because they do not develop financing and bonding relationships. Interviewee #SD3 went on to report that the bonding process is much more difficult in the current market than it was in the past.

Consistent with those comments, Interviewee #SD2, representing a Caucasian female-owned firm, reported that it is important for firms to have a relationship with a bonding company: "You have to have a relationship with the bonding company … they have to know your philosophy in life."

Interviewee #SD43, representing a Hispanic male-owned firm, reported that bonding companies like to see that firms have experience working in the public sector before awarding them bonds, which makes bonding especially difficult for new firms. Interviewee #SD43 indicated that it is important to build and maintain relationships with bonding companies to ensure that the process goes smoothly on future projects.

**Several interviewees indicated that insurance is more expensive in particular industries or in California.** Interviewee #SD14, representing a Hispanic American male-owned firm, reported that construction companies are required to hold more insurance compared to other sectors.

Consistent with those comments, SDTA #11, representing a veterans trade organization, explained that the City of San Diego requires contractors to hold separate insurance policies for residential and commercial construction. He argued that those requirements make it difficult for small firms to compete with large firms that can afford those insurance policies more easily.

Interviewee #SD3, representing a Caucasian male-owned firm, indicated that insurance is quite expensive in construction. He reported that his firm pays approximately $40,000 per year in insurance premiums. Similarly, Interviewee #SD5, representing an African American male-owned firm, indicated that his firm's insurance premiums are also very expensive (approximately $17,000 per year).

Interviewee #SD28, representing a Caucasian female-owned firm, said, "Insurance costs are extremely high. We shop them every six months. …" She went on to say that a number of insurance companies will not insure firms that work in her firm's industry because it is so dangerous.

Interviewee #SD36, representing an African American male-owned firm, reported that his firm holds both liability and workmen's compensation policies and that both are quite expensive: "Workmen's comp and liability — they cost a lot of money. The higher your payroll, the higher the workmen's comp."

Interviewee #SD43, representing a Hispanic male-owned firm, explained that insurance costs are very high and insurance requirements are very stringent in the construction industry: "Right now we have general liability, we have workman's comp. But then comes a case where you need a certain other [type of] insurance, and just the insurance is $500 extra for just that one job."

SDTA #3, representing a local chamber of commerce, explained that insurance is expensive in California compared to other states and is thus a barrier for all local firms.

SDTA #9, representing a public works trade organization, said that many of his organization's clients have stopped bidding on work with public agencies due to the insurance requirements: "Some of our clients have not bid [on contracts] because of increased level of insurance requirements on public contracts."

**Many interviewees reported that bonding, financing, or insurance are not barriers to pursuing work in the public and private sectors.** Interviewee #SD11, representing a Caucasian male-owned firm, indicated that obtaining a loan is relatively easy, regardless of race, ethnicity, or gender. He described his own experience in obtaining a loan: "I just went to [a national bank chain]. They asked if I had a house, I said 'Yes' and they said 'OK.' They gave me the line of credit right then." He continued, "Race and gender is not an issue in banking and bonding … [banks] are in business trying to get money, not turn you away because of what you look like." However, Interviewee #SD 11 acknowledged that there are likely a few lenders that are less willing to give loans to minority- and female-owned firms but that ultimately those lenders still approve the loans: "There are probably a few stubborn [lenders] out there, but why would [they] give up money because of the way someone looks?"

Interviewee #SD21, representing a Caucasian male-owned firm, reported that he is not aware of any barriers related to financing but that procuring equipment can be quite expensive in the construction industry. Similarly, Interviewee #SD24, representing a Caucasian male-owned firm, said that there are no barriers in construction associated with financing, bonding, or insurance.

Interviewee #SD5, representing an African American male-owned firm, indicated that obtaining a loan was relatively easy for his firm.

Interviewee #SD17, representing a Caucasian female-owned firm, reported that bonding is not a barrier to her firm's success: "We are not bonded, although some jobs have asked that we are. We would consider getting bonded if it was necessary and made a difference in getting a job, but so far it hasn't mattered."

Interviewee #SD10, representing an African American male-owned firm, reported that financing is not necessary to be successful in his line of work: "If your house is in order you should be ok [without loans]." He indicated that he has maintained his operating expenses by relying on his personal savings. Similarly, Interviewee #SD18, representing a Caucasian female-owned firm, said that the firm has never experienced any substantial financing issues, because they rely on their long-standing business revenues rather than on loans.

Interviewee #SD41, representing a Caucasian male-owned firm, indicated that if a firm has good credit, obtaining financing is relatively easy: "If you have a good credit history and a good banking relationship I don't think financing is too bad. Right now it is tough. Fortunately, we haven't had an issue, even with the current economic conditions."

Interviewee #SD46, representing an African American male-owned firm, said that insurance is not a barrier in his firm's industry: "Insurance has not been a problem. We have to shop it on a yearly basis to try to look for the best price."

**Recommendations related to bonding and financing**

**Some interviewees suggested that public agencies should provide finance and bonding assistance for minority- and female-owned firms.** Interviewee #SD3, representing a Caucasian male-owned firm, said that public agencies should relax bonding requirements for MBE and WBE firms, because, along with insurance, bonding is a substantial barrier to entry into the construction industry. Interviewee #SD3 also suggested that public agencies (and prime contractors) should grant a 5 percent price preference to MBE and WBE firms for contracts worth up to $100,000.

Interviewee #SD4, representing a Caucasian male-owned firm, recommended that public agencies should relax insurance requirements for subcontractors proportional to the size of their firm.

Interviewee #SD5, representing an African American male-owned firm, recommended that public agencies help MBE/WBE firms secure lines of credit from banks, obtain liability insurance at lower rates, and pay initial material costs. Regarding the latter point, he said: "Agencies should pay for materials and have them delivered to the job site. They should be supporting the general contractor in upfront costs of the job."

### C. Caltrans anecdotes regarding experiences with financing, bonding and insurance

The following anecdotes regarding experiences with financing, bonding, and insurance were obtained from interviews that thste study team conducted in connection with the 2007 Caltrans study.

**Many DBEs reported that bonding, financing and insurance is a barrier to pursing work in the public and private sectors.** CATA #1, an Asian American trade association, said that many of the association's members do not get involved with public sector work because the bonding requirements are too high and unaffordable. This issue is something that CATA #1 said that the Association had raised with Caltrans "for years" but that Caltrans has not been able to address satisfactorily. CATA #11said bonding puts restrictions on the amount of work a contractor can receive. If you are a small company and you do not have any property, you might only get a bond for $50,000 so this is the largest project you can receive. Even if you get a job, then you cannot bid any more jobs until you

finish that job. Caltrans might have a $25 million ramp. If you cannot get a bond for that amount, then you have to bid as a subcontractor. Usually the primes won't require the subs to have a bond for work under $50,000 to $100,000, but if it is over this then the subs usually have to provide bonding. He feels that his members' ethnicity affects their ability to get bonding because as minorities they don't own a lot of assets and other property. Personal wealth is taken into consideration in getting a bond.

Interviewee #CT51, a Hispanic male-owned firm, stated that the majority of prime contractors require bonding from subcontractors, especially if the subcontractor is a major subcontractor, but that some prime contractors know subcontractors from their reputations do not require bonding. He said that bonding was a "real problem" and a "very difficult problem" for DBEs. For his business, bonding had not been a problem up until the last few years, when it became an issue because the company "had a couple of jobs that went south" and over which it is litigating right now.

Interviewee #CT7, a white female-owned firm, stated that the company had a "good relationship" with their bank. However, she did relay an experience where a loan officer was telling her that the bank would not refinance a relatively small loan because their books showed little year-end income, even though the company ran $500,000 in payroll through the bank each year. She was able to get the loan by going to someone higher up in the bank. She also stated that it is difficult for small companies to buy health insurance and noted that the per-employee price they pay for health coverage is higher than that paid by larger firms.

A DBE commercial roofing contractor, submitting written testimony in connection with the public hearings, stated: "We do have difficulty obtaining bonding for public works jobs due to our limited resources." (Written testimony submitted 3/27/07).

A DBE and 8A company, submitting written testimony, stated most DBEs are excluded from multi-million dollar contracts (speaking specifically with respect to water authorities) because of lack of capital and bonding. (Written testimony submitted 3/26/07). A certified female DBE firm, submitting written testimony, stated she has had no problem trying to obtain insurance although she has never worked on a project requiring bonding which "might tell you how far excluded I am from being able to gain entry into some transportation projects." (Written testimony submitted 3/8/07).

**A few interviewees reported that their race, ethnicity or gender had affected their ability to obtain financing or bonding.** Interviewee #CT33, a Hispanice female-owned firm, said that she had not thought about her gender affecting her ability to obtain financing or bonding, but that she would say yes. She continued, "I'd have to have some sort of proof and I don't. I don't have any idea. You sense it sometimes, but I have no proof of that. Hopefully, I'm wrong."

Interviewee #CT10, an African American male-owned firm, stated that his race affected his ability to get financing and bonding "a long time ago," but that now it has "opened up" so that he does not have any problems. He feels that this was a change that occurred gradually over time.

CATA #1, an Asian American trade association, did not think that there are racial barriers to obtaining bonding or insurance, but said that the association's members have problems with obtaining financing because financial institutions "look at DBE firms more closely for some reason . . . ." CATA #11, a minority trade association, has a member that owns a credit union and he facilitates most of the financing for the other members. Ability to get financing depends on your credit. He said

that if you've been in business for a while, your credit is probably fine. Most young businesses, he stated, have bad credit. He believes race affects his members ability to get financing, especially if their credit is not good.

An white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified at a public hearing in San Diego: "I think minorities and women have a much harder time getting capital, getting bonding and getting insurance … in bonding … women are still asked to have their husbands sign at the bank, which floors me after 33 years" in business. (P.H. San Diego, 3/22/07).

**Some interviewees feel their status as a DBE helped them in these areas.** Interviewee #CT75, a white male-owned firm, simply cannot afford to bond his work. He feels DBEs are less affected by bonding issues because bond companies have DBE-type goals just like Caltrans. Interviewee #CT40, a white male-owne firm, knows that DBEs receive special rates on financing and bonding, but she does not have a lot of experience in the area. Interviewee #39, a Hispanic male-owned firm, also indicated that the company's ability to get financing was related to its ability to get steel at competitive prices and stated that the company "wouldn't have been able to get credit at all without the DBE program."

A small DBE information technology consulting firm who testified at the Los Angeles public hearing stated "There are so many good bonding programs out there, but you have to establish a track record … And I don't see that as an issue. I see it as building the business and getting all the right controls and accounting procedures and all those things in place first; that the actual access to money is maybe not the issue." (P.H. Los Angeles, 3/29/07).

Interviewee #CT39 stated that, with respect to financing, the company "do[es] pretty well by the bank." He said that bonding is "sometimes" a problem because of the company's small size. Interviewee #CT39 noted that sometimes a prime contractor will waive a bonding requirement for them because they are a small company and a DBE firm. Interviewee #CT39 said that he could not answer the question of whether the company's being a DBE firm had affected its ability to get bonding and/or financing, as he had been at the company for only two (2) years.

**A few interviewees were not sure whether their race affected their ability to obtain bonding, but suspected it might.** Interviewee #CT49, an African American male-owned firm, stated that he did not know whether his race or gender ever affected his ability to get bonding or financing, but that it was something that possibly happened. He said it would be subtle if at all since no one ever said outright that his ability to get bonding or financing was impacted by his being African American.

Interviewee #CT51, a Hispanic male-owned firm, said that financing is a "tremendous" problem for DBEs, and one that is exacerbated by slowness in payment from government bureaucracies and/or prime contractors. He stated that he could not answer whether his race had ever affected his ability to get bonding or financing, since the person or entity denying a bond is "not going to tell you, 'We are not bonding you because you are of a certain ethnicity or race or color or whatever [ ]'" but instead will "give a hundred other reasons why they do not give you the bond."

**Many DBEs did not feel that their race affected financing.** Interviewee #CT46, an Asian American male-owned firm, stated that financing and bonding were issues that the company has to deal with, but he did not feel that the company had experienced any race-related or race-based barriers to its

obtaining financing or bonding. Instead, he said whether a company can get bonding or financing is determined by its financial stability, and just "like everything else, your buying capacity . . . is directly proportional to . . . your financials, and you've got to work your way up . . ."

Interviewee #CT48, an Asian American male-owned firm, stated that there were no problems, barriers, or obstacles — based on gender, race, or other considerations — with obtaining financing.

Interviewee #CT7, a white female-owned firm, feels her gender has never affected her ability to obtain financing or bonding. She relayed only one experience where the company had to obtain bonding — a design and build job for the Army Corps of Engineers where the company hired and supervised construction contractors. It had to provide a personal guarantee for this bonding, however, a newer, smaller company (as opposed to someone like them who had been in business for two decades) would "have a hardship in [getting] bonding" and that "for a small company it would be almost impossible unless they do a personal guarantee for the bonding."

**Some DBE interviewees reported no trouble with bonding or financing.** Interviewee #CT31, an African American female-owned firm, indicated that the company does not have problems obtaining this insurance or financing generally because it has a solid track record that it has established over the past three decades. Interviewee #CT79, an African American male-owned firm, has not had any issues with financing or bonding. Interviewee #CT79 has not had any issues with financing or bonding. Interviewee #CT11, a Native American male-owned firm has not had any problems obtaining financing.

**Many interviewees stated that financing was difficult for smaller companies with less assets and new companies with less history, and not due to race.** Interviewee #CT49, an African American male-owned said that the company has to get bonding for its jobs and that, though bonding was an obstacle at the beginning when the company did not have a track record, it is not a problem now that the company is well established. He said that the same was true with respect to his company obtaining financing.

CATA #2, an African American business trade association, indicated that obtaining financing was not as big an issue for the association's members as is obtaining bonding. He said that if a company has been in business, it generally has a line of credit, but that the difficulty is getting the business experience in the first place and building one's business to the point where (s)he can put up its or other assets to secure financing.

Interviewee #CT81, a Hispanic male-owned firm, has had issues obtaining financing, but these problems have been those characteristic to small businesses in general and had nothing to do with his race. Interviewee #CT29, a Hispanic male-owned firm, believes a company needs to have been in business for three (3) years or more in order to satisfy the risk tolerance for banks. He cashed out his 401k in order to finance his business.

CATA #3, a Hispanic trade association, stated that he had had problems obtaining financing in the past and that now that he has sufficient financial resources to obtain loans, he does not have the work opportunities to make taking out these loans worthwhile. CATA #3 said that many young and/or fledgling companies have trouble with financing, and that the federal Department of Transportation's program to guarantee loans through banks was a good program but that it had been "cut back considerably." He also said that banks do not like (to make loans to) businesses with no

track record and/or financial history, but that, even though banks are less likely to take risks with people of color, if one has money (s)he can borrow money. Asked if his ability to get financing had been affected by his race, CATA #3 replied that he did not know and that he did not think so, but that perhaps it did in the past.

Interviewee #CT8, a Hispanic male-owned firm, stated that "[b]onding is always an issue" and that it is "99 percent harder on any small business . . . than it would be on a large business." He did not think that any barriers to obtaining bonding or financing were attributable to his firm being a DBE, but instead to the size of his company and having trouble finding someone to put up the money for a bond.

Interviewee #CT46, an Asian American male-owned firm, stated that financing and bonding were issues that the company has to deal with, but he did not feel that the company had experienced any race-related or race-based barriers to its obtaining financing (which, according to Interviewee #CT46, the company really does not do) or bonding. Instead, said Interviewee #CT46, whether a company can get bonding or financing is determined by its financial stability, and just "like everything else, your buying capacity . . . is directly proportional to . . . your financials, and you've got to work your way up."

Interviewee #CT64, a white male-owned firm, has not performed enough big jobs to get bonded hire than $500,000. He feels this is a "Catch 22." He would like $1 million bonding capacity. He is working his way up slowly – if he can do ten (10) $100,000 jobs per year his capacity will go up.

A small African American owned construction company testified at a public hearing in San Diego that he did not feel there was equal access to capital, bonding, and insurance for DBE firms. He gets excited on jobs where primes offer to assist with bonding and insurance. "I think that certainly more effort needs to be put into the bonding and insurance. We had access to capital. That was not a problem for us, but bonding and insurance was." (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, testified at a public hearing in San Diego that "getting the insurance and bonding … it's almost impossible in a lot of cases to get that. Because I am an Indian contractor … the only way that I can get the work is if I partner with another." (P.H. San Diego, 3/22/07).

Interviewee #CT1, a Native American male-owned firm, does not need to obtain bonding in his type of business. He has not experienced any barriers in obtaining financing. He stated it is more difficult when you are new. When he first started in the 90's he "couldn't buy a pencil sharpener on credit."

Interviewee #CT6, a white female-owned firm, stated the nature of the business is such that bonding and financing are not something that the company deals with. Interviewee #CT16, a white male-owned firm, stated "[w]e don't really deal with that too much" because the company is "self-funded and . . . pretty cash flow positive."

**Several interviewees reported that Caltrans' new insurance requirements presented a barrier to pursuing work.** Interviewee #CT33, a Hispanic female-owned firm, stated the company has to carry professional liability insurance for its Caltrans work and all its other work as well. She said that it was "not cheap" and cost them $25,000 a year to carry insurance for $2 million.

CATA #7, a Filipino trade association, believes insurance requirements are overly stringent. He said Caltrans needs to make some sort of reasonable adjustment for projects that are smaller. Right now they require $1 or 2 million worth of insurance for both the sub and the prime on all projects.

CATA #10, an Asian American trade association, stated its members do not obtain bonding, but they do obtain insurance. He stated Caltrans insurance is very high. If the larger firm is doing a $10 million fee and the sub is going to only get $100,000 of the contract, the small firm may still have to obtain the same rate of insurance; if the fee is low, the insurance premium may take most of the profit. This is a barrier. He does not think race, gender, or ethnicity affects the ability to obtain insurance.

A white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified at a public hearing in San Diego that Caltrans recently increased its insurance requirements. She said "my insurance for the year is maybe fifty or a hundred thousand dollars cheaper than if I carry $5 million or $10 million. A small business can't always — even if you have the money to buy it, you can't — they will not give it to you." (P.H. San Diego, 3/22/07).

A Hispanic female-owned consulting firm testified at a public hearing that the insurance requirements on construction contracts are "excessively high." "Due to the contractual 'flow-down' provisions, subcontractors and specialty subcontractors, including DBEs, must meet the same insurance minimum thresholds which are prohibitive based not only of cost as well as history experience." She stated that this is "cost prohibitive." She further testified that contractors are "required to maintain the same level of insurance throughout the life of the project. On a number of contracts which are multiyear … that limits their ability to bid on any other work because they've already used bonding and their insurance on that one project."

**Recommendations related to bonding and financing**

Interviewees suggested Caltrans should advertise, promote, and expand programs aimed at assisting small business obtain bonding, insurance, and financing. (CT Interviewees #64, #75, CATA #2). Very few interviewees were aware of any programs by Caltrans to assist with bonding, insurance, or financing. Interviewee #CT75, a white male-owned firm, feels Caltrans should provide bonding for the contractors who win the bids; otherwise, most small businesses are shut out from participating in Caltrans projects. CATA #2, an African American trade association, suggested Caltrans implement a system under which prime contractors cover bonding and insurance for their subcontractors. Interviewee #CT64, a white male-owned firm, suggests Caltrans make the engineers' estimates tighter so bonding capacity is not unnecessarily taken up.

Interviewee #CT29, a Hispanic male-owned firm, believes that the mentor program is helpful for obtaining bonding because the bond capacity of the mentor can be used under most mentor programs. Furthermore, the bundling issue affects the ability for companies to be within reach of obtaining the projects as a prime because the jobs are so large, it is very difficult if not impossible to finance.

CATA #2, an African American trade association, stated that it was difficult for the Association's members to get bonding and that he thought that prime contractors should do a better job in this area. He queried why, if a prime contractor has a bond, a subcontractor also needs one, and why,

even if the subcontractor is required to carry a bond, the sub's bond needs to be in the same amount as the prime's. CATA #2 indicated that obtaining financing was not as big an issue for the Association's members as is obtaining bonding. He said that if a company has been in business, it generally has a line of credit, but that the difficulty is getting the business experience in the first place and building one's business to the point where (s)he can put up its or other assets to secure financing. He said that the state bonding program is good but expensive, and that the Association had addressed the issue of bonding with Caltrans, along with the prompt payment issue. He said that bonding, financing, and payment issues are big issues now and were big issues when the program was in place. He also said that a company's landing a contract helps it to better deal with these issues (e.g., a company that receives money on a contract can use some of this money to pay for a bond) but that a DBE program is needed in order for more businesses to get contracts.

CATA #10, an Asian American trade association, said the U.S. DOT used to have the transportation loan program as did the Small Business Administration Program. He stated financing is available but you lose a percentage of your profit.

## X. The Effect of Race, Ethnicity, and Gender Upon a Firm's Ability to Obtain or Engage in Business

### A. Consortium anecdotes regarding the effect of race, ethnicity, and gender, if any, upon a firm's ability to obtain or engage in business

**Some businesses interviewed felt that race, ethnicity, or gender affected their ability to obtain or engage in business. (Interviewees #2, 4, 5, 10, 12, 13, 16, 17, 19, 20, 21, 22, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 40, 43, 45, 46, 47, 50, 51, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that race or ethnicity may affect his business's ability to obtain business because of the lack of financing or being unable to obtain financing.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he believes that race, ethnicity, or gender indirectly affects his ability to obtain or engage in business because he does not believe that prime contractors would contact him if his company was not certified as a DBE. He stated, "I know the only reason they did in the very beginning was because we were certified and at that time [the programs required between 10 percent to 15 percent DBE participation]; that is the only reason why they would call us."

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he is aware of one situation in which the race, ethnicity, or gender of the owner of a business has affected the businesses' ability to obtain or engage in business. Interviewee #5 stated that his company cannot receive DBE certification and cannot compete for certain jobs, though most of the employees are minorities, because the owner of the company is Caucasian.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they had a feeling their race, ethnicity, or gender had affected their ability to obtain or engage in business. Interviewee #10 declined to elaborate further for purposes of the report.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he could not prove any instance in which his race, ethnicity, or gender has affected his ability to

obtain or engage in business; but, he stated that he has tried pursuits in the past that have left him feeling "that maybe that was a part of it" (e.g. race, ethnicity, or gender). He stated he was left feeling like he did not represent the local community. He stated that in other cases, "it has been the complete opposite" in that he has benefited the team, not so much due to his ethnicity, but due to the fact of where he grew up. He stated that he knew the local sensitivities, the local priorities, and he could relate to the locals.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, believes that his race and ethnicity affect his company's ability to obtain or engage in business. He stated that he used to have a white male business partner and he seemed to always have a lot of work. Interviewee #13 stated that although the difference in the amount of work may be due to his marketing skills, he believes there is a "good ol' boys" network at play.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that race, ethnicity, and gender has affected the business' ability to obtain and engage in business. The DBE/MBE certification has given the company opportunities and the ability to participate in the work environment on a larger scale. Without the qualifications associated with Interviewee #16's race, ethnicity, and gender, the company would just be another one of hundreds to choose from for large companies; the DBE/MBE status helps to differentiate the business.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that race, ethnicity, and gender has affected the business' ability to obtain and engage in business, noting that this is the result of human nature. Interviewee #17 stated affirmatively that companies work with whom they are comfortable. Interviewee #17 reported that "we all have our paradigms, and it takes a long time to get over them."

Interviewee #19, an MBE-certified African American male attorney, stated that there are always barriers to pursuing work. He stated that African American law firms are not treated the same as Caucasian law firms.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that if asked 14 years ago she would have said that her race, ethnicity, and gender have affected her ability to obtain and engage in business. She stated that today her company has relationships with many of the large firms that they work with and those large firms come from the same social network that she does. She stated that there is a certain hesitancy among companies to trust her business with large projects. She stated that she felt the Consortium has encouraged prime contractors to work with minority- and female-owned businesses, but it is dependent on the constituency. She stated that prime contractors should utilize firms that reflect the constituency of the municipality and should be sensitive to that need. She stated that in the private sector it is a challenge to obtain work and her firm is contacted when the prime contractor needs an African American firm.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, felt that her race and gender has probably affected her ability to obtain or engage in business with the Consortium and prime contractors. She did not feel as though this has been an issue in the (non-Consortium) public sector although it has been an issue in the private sector.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, felt that his race has played a positive role in helping him to obtain business with the Consortium, but that it has negatively impacted his ability to work with prime contractors.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, does feel sometimes that being a female in a male-dominated field has affected her ability to obtain or engage in business. She stated that her gender has affected her ability to obtain work with prime contractors approximately 50 percent of the time whereas in the public sector, depending on the job, her gender has affected her ability to obtain or engage in business approximately 30 percent of the time.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, did not believe race or gender has affected his ability to obtain or engage in work in an overt way, but stated that there is a tendency for a firm "to go with people who know your work." He stated that "you have to break in to the inner circle. It is harder to do when you are a minority. It is hard to gain their confidence."

Interviewee #29, an African American male-owned electrical contractor, stated that his race, ethnicity or gender has "absolutely" affected his ability to obtain or engage in business considering the fact that he has never worked with a huge firm on any large-scale projects. Interviewee #29 stated that with respect to pursuing work with the Consortium, the knowledge of the availability of contracts is not available to the public or on the website so he feels that it is a selective process and they select who they want based on friendships and relationships. He stated that relationships result in the contracts and that minorities are not able to develop relationships because they do not socialize with the majority firms; they are typically kept out of the inner circle. He stated that he has never worked in the public sector other than his single project with UCLA, so he does feel that there is a bias. He stated that typically the "worker bees" will be minorities and possibly one or two at the top, but there is indeed a bias as it relates to the awarding of contracts and the knowledge of projects. He stated that his race, ethnicity, or gender has positively affected his ability to obtain work in the private sector. He stated that even though companies and people feel that they can get over on him, he feels that it does allow him to keep his business afloat. He stated that people do hire him because of his race and that gets him in the door. He stated that once he gets a job it is proven that it will lead to more work either through the same person or a referral and that is what has sustained his business.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he does feel as though his race and ethnicity affect his ability to obtain and engage in business. He feels that this happens in instances in which he does not fit into the mainstream look of other investors or contractors even if he has done past business with them and they can vouch for his performance and his business' quality of work. He does not feel that it has affected his ability to obtain work with the Consortium or with other prime contractors.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated both "yes" and "no" as to whether his race, ethnicity, or gender has affected his ability to obtain or engage in business. He stated that his business has been identified as a minority business even though he utilizes the best crew that he can assemble. He does not care if they are minorities: black, white, blue, or brown. He just uses the crew that can perform to the standards which he places on them. Interviewee #31 said he is the face of the business and as the face of the business there are some stereotypes and preconceived notions about the work that African Americans do. He stated

there is the thought that African American workers are lazy, overcharge, and cut corners. He feels that none of these examples characterized what he and his company have done on their completed jobs.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that her gender has "absolutely" affected her ability to obtain and engage in work with the Consortium and in the non-Consortium public sector and private sector.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, feels that her race and her gender have affected her ability to obtain or engage in business. She feels that the Consortium has a bias against DBEs. She stated that she has experienced gender bias with prime contractors and in the public sector.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that her race, ethnicity, or gender has probably affected her ability to obtain or engage in business with prime contractors and in the private sector. Interviewee #35stated that many times things are worked out ahead of an RFP even being presented to the public; she feels as though race is sometimes a factor.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she believes that her race and gender affect her ability to obtain or engage in business. She stated that she had a recent contract with Metro but then they called her and decided to take all the work back. She feels that when you are African American you get questioned a lot about your company's price structure. She stated that with respect to law firms in the private sector, she believes that large non-African American law firms will not utilize her services, but will work with someone from their race instead (although it is not something someone would say to her face). She stated that if she knows that the law firm is not African American she will send a Caucasian employee to get the business.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he felt that his race or ethnicity affects his ability to obtain or engage in business with the Consortium, with prime contractors, and in the private sector in general. He stated that it is common knowledge that prime contractors do not want to use DBEs. He stated that, in the private sector, if prime contractors do not have to use a minority firm, and they do not receive any incentive for using one, the prime contractors will not use minority firms but use their friends instead. He stated that his firm has been successful in the public sector generally though he did not get everything that he bid on. He stated that he works everyday to build his business and credibility.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that his race or ethnicity has affected his ability to obtain or engage in business across all sectors. He explained that there are very few Native Americans in the contracting business; he stated that the L.A. County MTA and other agencies then have a lot of curiosity about Indians. He stated that they want to see his identification, ask him how he got his identification, and ask him how he knew that he was an Indian.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, felt that his race or gender has affected his ability to obtain or engage in business with the Consortium, with prime contractors, and in the private sector (but not in the non-Consortium public sector). He stated that the only reason a prime contractor will contact him is if DBE

participation is required; it is only to help them make money. He stated that the Consortium should somehow put small businesses and DBEs in a position to make money too.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that it was possible that his race, ethnicity, or gender has affected his ability to obtain or engage in business with prime contractors and in the private sector. He did not believe these factors affected his ability to obtain or engage in work with the Consortium or in the public sector.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, does not feel as though her race, ethnicity, or gender have affected her ability to obtain or engage in business because they just do not give the offers anymore. This has been the case in the public and private sectors.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he believes his race has definitely affected his ability to obtain or engage in business with the Consortium (MTA and RTD), with prime contractors and in the private sector to a lesser extent. He stated that ever since Caucasian females became a protected class "it has been downhill." He stated that he is competing with Caucasian females as minorities or Caucasian males using Caucasian females as "fronts" so that they can get the minority business.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that his race has probably affected his ability to obtain or engage in work with the Consortium, in the non-Consortium public sector, and with prime contractors, but stated that he could not prove it. He stated that in the private sector, when you do not get picked for a job but know that you are just as qualified as the competitor, you have to wonder if it is because you are African American.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that if he were Caucasian he would get more contracts. He stated that no one would help him to obtain bonding which he felt was also a factor in his ability to obtain or engage in business. He stated that when he needs to get an insurance claim approved he will send a Caucasian employee because the rate for which they will receive approval is higher than that of other employees. He stated that last year, in the public sector, a Caucasian-owned firm with no license and no insurance received a contract based on the fact that they were not minority owned. Interviewee #50 also cited his race and ethnicity as a barrier to pursuing work with the Consortium.

TA #2, the President of the Black Contractor's Association, stated that the race, ethnicity, or gender of a business owner does affect the businesses' ability to obtain or engage in business because prime contractors often have a lack of confidence in newcomers or others who they feel have not met certain prequalifications. Interviewee TA #2 stated that in general DBEs, women, and minorities are impacted by the lack of outreach utilization in the Consortium transportation industry. He stated that women have a particularly hard time with prime contractors working on public contracts.

**Some interviewees felt their race, ethnicity, or gender had no effect on their ability to obtain or engage in business. (Interviewees #1, 3, 6, 7, 8, 11, 14, 15, 18, 22, 23, 28, 32, 39, 41, 42, 52, 53, 55, 56, 57, 58, TA #1).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, does not believe that his race, ethnicity, or gender has ever affected his firm's ability to obtain or engage in business.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, was not aware of any circumstances in which the race, ethnicity, or gender of the owner has affected the businesses' ability to obtain or engage in business.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, was not aware of any incidents in which race, ethnicity, or gender of the owner of a business has affected the business's ability to obtain or engage in business.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he does not think that the race, ethnicity, or gender of the owner of a business affects the businesses' ability to obtain or engage in business. He stated that it is generally a positive because on government jobs there are goals for employing DBEs. In the private sector a business' ability to obtain business is related to its competence; general contractors just want the job done. Therefore, being a minority is an asset. He stated that he has never seen a situation in which the race, ethnicity, or gender of the owner was a negative.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that her race, ethnicity, or gender has not affected her ability to obtain or engage in business with the Consortium or with non-Consortium public sector work, but it has sometimes affected her ability to engage in business in the private sector.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that his race, ethnicity, or gender has not affected his ability to obtain or engage with business with the Consortium or prime contractors. He felt it was hard to say whether it has affected his ability to engage in business in the non-Consortium public sector and the private sector.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, does not feel as though her race or gender has affected her ability to obtain or engage in business, but she does feel that there is a mental block toward small businesses.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported that only the quality of his work affected his ability to obtain or engage in business.

TA #1, the President of the Latino Business Owners of America, stated generally a businesses' ability to obtain or engage in business is not based on race, ethnicity, or gender but on ability. He did state, however, that minorities have a harder time building relationships. TA #1 stated that this problem is generational. Non-minorities have more contacts than minorities. TA #1 stated he believes that this situation is somewhat different in Los Angeles because there are more mature minority firms there. He stated that in comparison, most minority firms in San Diego are still in their infancy.

**A few interviewees did not know whether their race, ethnicity, and/or gender had an effect on their ability to obtain or engage in business. (Interviewees #9, 24, 44, 48, 49).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not know whether his race, ethnicity, or gender has affected his business' ability to obtain in or engage in business.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she did not think her race, ethnicity, or gender has affected her ability

to obtain work with the Consortium, but sometimes a light bulb comes on and she thinks that maybe it is.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he does not believe that his race, ethnicity, or gender has affected his ability to obtain or engage in business, but stated that it is not something he would ever know because it is not obvious.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, did not feel as though his race, ethnicity, or gender had affected his ability to work with the Consortium or in the non-Consortium public sector. He was not sure whether it affected his ability to obtain work with prime contractors but stated that he could not prove anything.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, did not feel as though he has been shut out of opportunities with prime contractors, the Consortium, or other public sector entities. He did not know whether his race or ethnicity has ever shut him out of opportunities to obtain business.

**Work environment for minorities and women**

**Some interviewees reported no differences in the work environment for minorities and women than for non-DBEs in the Consortium transportation industry. (Interviewees #3, 7, 8, 9, 11, 16, 18, 20, 22, 23, 37, 39, 48).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, did not know of any differences in the work environment for DBEs, women, and minorities in the Consortium transportation industry. From his perspective as a prime contractor, he noted that he did not care who showed up to work a job; gender and minority status had no impact on the job.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated in general there are no issues with the work environment for DBEs, women, and minorities in the Consortium transportation industry. He stated, in general, the private sector goes on competence. If the general contractor or owner thinks that a business is competent, they do not care about race, ethnicity, or gender. If, however, they think that you obtained the job by means other than competence, then it becomes an issue. However, if the DBEs know what they are doing, no one cares that the company is a DBE.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that there is no "significant distinction" as to the work environment for women, minorities, or DBEs. He spoke negatively about the DBE Program. He stated that if for some reason the state needs a quick turn-around on a project they will waive the DBE requirement. He stated that the DBE Program is arbitrary and as a result, he feels it is "worthless." He stated that the DBE subcontractors that he has spoken with indicated to him that "nothing has ever come of their" DBE certification.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that among the transportation engineering firms, the work environment for women, minorities, and DBEs is not significantly different than that for non-DBEs; "there are a lot of good engineering firms out there."

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, declined to describe the work environment for DBEs, women, and minorities in the Consortium transportation market, but stated that her personal experience has been "great."

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, noted that the work environment for DBEs, women, and minorities in the Consortium transportation industry is very inviting and that it is a positive work industry. In large part, diversity is being enforced and promoted on various projects. Interviewee #16 did state that people are generally chosen because of their abilities.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, noted that "she's having a blast," and that there are lots of opportunities for small businesses to do important things in the Consortium transportation industry.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the work environment for women and minorities is very positive and very integrated; this has been very helpful for business. Interviewee #20 identified an African American female-owned business with a fleet of over 7,000 buses; she thought this was very impressive.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has experienced normal work days.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, stated that the work environment for women and minorities is "okay."

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he did not remember anything negative about the work environment for DBEs, women, and minorities in the Consortium transportation industry. He stated that, for the most part, the work environment is okay.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that she does not think the work environment in the transportation industry is different than anyone else's; she stated that work can be difficult and hard and that just comes with the territory.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that as far as he knows the Consortium work environment for DBEs and women-owned business is okay.

**Some interviewees reported "inequalities" in the work environment for DBEs, women, and minorities when compared to the work environment for non-DBEs, non-women, and non-minorities. (Interviewees #14, 26, 33, 34, 40, 50, 51).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that inequalities in the work environment often happen because the agencies with whom they work do not understand the industry. He stated that the ability to do good work is tied directly to the qualifications of the project manager and in the public sector, the project manager often does not have the required experience.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the work environment for women and minorities is not easy, is sometimes hostile, and is very male-dominated.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that the work environment for women and minorities is "all over the map" in terms of how it affects women and minorities. She stated that it is dependent on the prime contractor and the circumstances of the project. She stated that in the final analysis, the work environment created by the prime contractor is usually based on trying to save money.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated there is generally a bias against women in the industry and an institutional bias against DBEs in particular.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, observed that DBEs are "kind of looked down upon." He stated that the Consortium makes you feel like you are only there because you are a minority and you should be happy with any amount of money that you make; they want the DBEs to think that they are lucky to be there working.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the work environment for women and minorities is very difficult; he stated that the work environment for Caucasian people is very easy.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated that he has come to the conclusion that small businesses cannot compete in the transportation industry.

**Some interviewees reported an absence of minority and female-owned businesses in the Consortium transportation industry. (Interviewees #2, 10).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he rarely sees a minority business in the transportation industry. He thinks it stems from the small numbers of minorities in the engineering field in general and in the working world those numbers are even smaller.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that there are more men in their industry that they compete against, but her company is successful 60-70 percent of the time.

**Some interviewees reported that "women and minorities" are still affected by who they are. (Interviewees #1, 4, 13, 17).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that people are still affected by who they are. He stated that he believes women who are aptly qualified for a job are still discriminated against and not given their full opportunity. He stated he had experience in a private sector company when "an extremely gifted" apprentice was sexually harassed "and left the field because of it." Instead of the female taking action, she just left the trade. He stated that in contrast he has also seen some extremely talented women "living up to their full potential" and running crews in the field.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that the work environment in the industry for DBEs, women, and minorities is not easy because you have to sell yourself to the prime contractors and make sure that they are willing to put you on their team as a subcontractor. He said even if you are successful in getting on the team, you have to be lucky enough that the prime contractor actually wins the contract.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that while he could not comment on gender, he does have a Caucasian male assistant and sometimes he feels as though his assistant is able to better relate to his Caucasian male clients.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, described the work environment for DBEs, women, and minorities in the Consortium transportation industry as fine. Interviewee #17 has been in the industry for a long time and knows the people, and her company has earned its reputation. Interviewee #17 knows there are opportunities that she's missed because she's not the right ethnicity or not the right race, but she just moves on to other opportunities.

**Some interviewees reported a difficulty in new DBEs' ability to obtain contracts. (Interviewees #12, 30).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that most members of the Consortium (OCTA, L.A. County MTA, and SCRA) have done an excellent job of offering opportunities to DBEs, WBEs, and MBEs, and that support has allowed the industry to diversify and has forced large companies to increased participation by qualified firms. In some cases, it has opened up opportunities for new DBEs. The issue with the Consortium agencies is that some will introduce new DBEs although others will only use the "same old, same old" DBEs.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he can perform the work as well as audit and accounting processes, but he is not called to perform the work because he is a small business.

**Other interviewees reported no knowledge as to the work environment for minorities and women in the Consortium transportation industry. (Interviewees #5, 6, 15, 21, 24, 52, 53, 55, 57, 58, TA #1).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he is not specifically aware of the work environment for DBEs, women, and minorities in the Consortium transportation industry. He does, however, know people who are DBE certified and they say that there are definite benefits to the certification. Interviewee #5 stated that he did work on one Metropolitan Transit project with a former company and the owner was minority (Asian) and the company was DBE certified. The certification was helpful to this owner because he received most of his work because of his certification.

**Stereotypical attitudes**

**Some interviewees reported having experienced stereotyping "first-hand." (Interviewees #12, 17, 19, 20, 25, 26, 28, 31, 33, 34, 40, 45, 46, 50, TA #2).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he had experienced stereotyping within the Consortium transportation industry. He stated that he had one situation where he was "tagged"

as a "rail engineer" without the understanding or wanting to understand that he does more than that; this happened in an interview with one of the Consortium agencies and his company did not receive the job. He stated that one of the key members of the panel called one of his friends to learn more information about Interviewee #12 and classified him on that basis.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she has knowledge of stereotyping in the Consortium transportation industry, but that when this occurs the work is not worth it. Interviewee #17 immediately handles any reports of this kind of behavior when reported by her employees.

Interviewee #19, an MBE-certified African American male attorney, stated that he believes that his firm is not given high-profile cases because of stereotyping.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has experienced stereotyping in the Consortium transportation industry. She stated that typically women are called when the project calls for outreach; this is in her favor because that is her firm's focus.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he has heard of stereotyping within the Consortium transportation industry; he felt as though a firm's DBE certification is like a negative label.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has heard about stereotyping in the industry and she has overheard male contractors make references about certain people that were stereotypical.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that stereotyping is a matter of perception; his company endures and they move on to the next bid.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has experienced stereotyping. Although it was not in the Consortium transportation industry, he feels that he has dealt with it in the sense that when he arrives on a project with a diverse crew of the best men available, in his opinion, they look at him and expect less immediately. They assume that the quality of work will not be up to snuff whereas when he has worked on a project for a minority firm with all white men, and maybe he, and one other [minority], there is not the same feeling or expectation for failure.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that it can be very difficult to get out of the mold of the impressions that prime contractors have about DBEs. She stated that even when prime contractors have previously worked with a subcontractor, it is very difficult for them to understand that you may have the skills other than those utilized on prior jobs.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she has experienced stereotyping in that because she is a small firm, she is presumed to be incompetent and incapable of doing the job.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has experienced stereotyping and there are always conflicts between the prime contractors and the subcontractors. He stated that even if the Consortium believes that he can do a certain job the prime contractor is not convinced.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the Consortium always utilizes the same companies as opposed to opening opportunities to new companies and inviting fresh ideas.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has experienced stereotyping "a little bit." He stated that he has gone out on some little meetings to discuss a contract and he could see the meeting participant's surprise when he walked into the room.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he has the feeling that he is stereotyped any time that his face is shown. He stated that his appearance has been a factor in his inability to receive the quantity of work that he is capable of performing.

TA #2, the President of the Black Contractor's Association, stated that he has experienced first-hand stereotyping of African Americans in the Consortium transportation. The stereotype is that they are "lazy" and "do not want to work." Similarly there are stereotypes that Asian people do not do construction because they do computers, and Native Americans do not do construction because they have bingo. TA #2 stated that last year he approached a Hispanic foreman and asked the foreman why there were no African Americans working on the project. He recorded the response, "they're lazy and they do not want to work." TA #2 stated that he also went to another Caucasian foreman and asked the same question, why there were no African Americans on the job, and was told "they do not want to work." TA #2 taped the comments and reported it to the local government. The job site was shut down that day. The next day TA #2 met with the owner, and the owner hired a couple of African Americans who were subsequently laid off after the job was completed. The company has not hired any other African Americans and they are still doing work for the City of San Diego. The City Attorney met with TA #2 and listened to the recording. TA #2 was told that the City would audit the company's employee records. TA #2 later learned, however, that the audit was only a "desk audit" in which a questionnaire was completed. The company was also determined to be in compliance.

**Some interviewees had heard of stereotyping but not experienced it. (Interviewees #15, 22, 49, 51).** Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of stereotyping in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside. Interviewee #15 has specifically informed his employees that kind of behavior is intolerable and not allowed.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had heard of stereotyping.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he had heard of stereotyping and was sure that it exists.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having heard of stereotyping in the Consortium transportation industry.

**Most interviewees reported never having heard of or experienced stereotyping in the Consortium transportation industry. (Interviewees #1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 18. 21, 23, 24, 27, 29, 30, 32, 36, 37, 38, 39, 41, 42, 44, 47, 48, 52, 53, 54, 55, 57, 58, TA #1).** Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, has no experience of knowledge of stereotyping. Interviewee #18 stated that there is a lot of diversity in the Consortium transportation industry.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has not heard of stereotyping nor does he pay attention to useless talk.

**Offensive comments or behavior**

**Some interviewees reported having heard of or experienced offensive comments or behavior in the Consortium transportation industry. (Interviewee #1, 5, 13, 15, 17, 22, 26, 34, 38, 40, 46, 50, 51, 52, 55, TA #2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that offensive comments and behavior "[are] alive and well" in the construction industry; he stated there were too many examples to count. He stated that he tries to make sure that it does not happen in his shop, but he is not aware of what happens when he is not around.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he has not specifically heard of any offensive comments in the Consortium transportation industry but he heard when he worked with an Asian owner on a project about 10 years ago that some people think companies use certification as a means "to get something." He stated that he often heard others say that people who are minorities take advantage of their ethnicity to get a job.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he once worked with a project manager who "had loose lips" and made a negative comment about women. He stated that people are careful not to make racial comments around him.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of offensive comments in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, reported that she has heard of offensive comments about minorities in the transportation industry, but they were not directed towards her or her employees.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has heard of and experienced offensive comments in the transportation industry. However, she did not complain since she felt that it would not help; because they were a small company they could not afford to make waves.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she had heard of offensive comments in the transportation industry related to race.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, reported having "the 'n-word' hurled at him" and has on several occasions been verbally accosted by a prime contractor's employees.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated he had heard offensive comments in Orange County and with North Country Transit. He stated that he did complain to the appropriate officials but it did not change anything.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he has not heard anything directly but he finds the fact that they are not receiving contracts offensive in and of itself.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, stated he has experienced offensive comments and behavior, including firms telling him he would get the work and then not utilizing his firm. He has also heard racist names being used.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported having heard of offensive comments or behavior in the Consortium transportation industry, but was unable to identify any specific examples.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, had not heard offensive comments or behavior, but noted that this did happen many years ago.

TA #2, the President of the Black Contractor's Association, stated that offensive comments or behavior in the Consortium transportation industry is commonplace. He stated that one African American working on a government project to demolish a high school in 2006 found a black doll with a noose around its neck wedged between a car. He also stated that another African American working on a project involving a waste-water plant complained about 10 years ago that his tires were being slashed and swastikas were drawn on a wall. TA #2 stated that the worker sued his employer, but he could not recall the result.

**Most interviewees reported never having heard of or experienced offensive comments or behavior in the Consortium transportation industry. (Interviewees #2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 19, 20, 21, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 41, 42, 44, 45, 47, 48, 49, 53, 54, 57, 58, TA #1).** Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has not heard of or experienced offensive comments or behavior in the Consortium transportation industry. He does not believe that people would be forthcoming with those types of feelings or comments in the sense that they would not be blatantly obvious that that was what was going on if that were the case.

**Discrimination**

**Some interviewees reported the existence of discrimination in the transportation industry (Consortium and non-Consortium). (Interviewees #2, 4, 13, 14, 15, 17, 19, 22, 24, 25, 27, 30, 34, 37, 38, 40, 46, 47, 49, 50, 51, 52, 53, 55, 58, TA #1, 2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he experienced discrimination while employed by Caltrans five or six years ago. He stated that non-minorities were favored for promotion.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that although he has not specifically heard of any instances of discrimination in the industry, he is sure that there are such instances of discrimination in the industry, but it is so hard to prove.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he had never heard of or experienced "overt" discrimination, but it is hard to tell. He stated that there is much that could be discriminatory but everyone is "politically correct." Interviewee #13 also stated that he has observed favoritism on the part of the agency favoring a male over a female counterpart.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he had "maybe" heard of discrimination in the Consortium transportation industry; for example, he has heard comments like "people do not like to work with women." He stated that he does not know the basis for decisions (i.e. whether discrimination is involved) because he is not there when the decisions are made.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of discrimination in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside.

Interviewee #19, an MBE-certified African American male attorney, stated that he has experienced subtle discrimination by the Consortium in that he is not given the quality or quantity of cases that he deserves; he stated that they are not assigned the high-value cases.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of discrimination in the transportation industry.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, reported that she has heard of discrimination in the Consortium transportation industry but not as far as contracts are concerned.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he felt as though discrimination is always present. He believes that his inability to get "face time" with prime contractors is racially motivated. He stated that "white men do not want to sit down and talk with blacks; it is hard."

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he has experienced discrimination in the transportation industry in being placed on a team and then "put to the side."

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, feels as though there is a level of discrimination, but nothing that he can unequivocally prove simply because those types of things are not stated nor are they put in writing; rather they are manifest in actions and execution. Interviewee #30 has not complained about alleged discrimination because DBEs and small firms do not have the manpower nor the ability to expose them without concrete evidence.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he has not observed any obvious discrimination but he is sure that it has happened. He stated that he would not know who to complain to about any such discrimination without jeopardizing future contracts.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has experienced discrimination in the Consortium transportation industry. He stated that someone once made a comment about going back to the reservation. He did not complain and he has no confidence in anyone he would complain to; he stated that this has been going on ever since [Christopher] Columbus.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, reported that he had been called a racial slur and had been verbally accosted by a prime contractor's employees.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he has heard of discrimination in the transportation industry, but "this has been going on for a few hundred years — nothing new." He stated: "I have been dealing with it all my life."

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he had "not really" heard of discrimination in the Consortium transportation industry, but stated "it is hard to put your finger on. It is just a part of life."

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that it was very possible that he had experienced discrimination in the Consortium transportation industry. He felt as though it may have happened, but he just did not recognize it.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, reported feeling discriminated against in terms of obtaining work with the Consortium, but stated that it was nothing that he could prove.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having experienced discrimination in the Consortium transportation industry. He felt that because of his color he was told not to complain about his experience because he would suffer retaliation in terms of firms not utilizing him on future projects.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported having heard of discrimination in the Consortium transportation industry, but again, could not identify any specific examples.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, stated that he has heard of discrimination, but stated that it was nothing concrete.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, stated that he believes that there is veiled discrimination in the transportation industry, but he does not know how to prove it. He feels that you can change situations by changing the requirements.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, had heard of discrimination in the Consortium transportation industry, but could not identify any particular incident.

TA #1, the President of the Latino Business Owners of America, stated that there is discrimination in the Consortium transportation industry in the form of participation of minority firms. He stated that the industry does not have to directly discriminate against minorities to impact their participation. TA #1 stated that the program does not encourage participation and the agencies do not follow the racial breakdown of their projects.

TA #2, the President of the Black Contractor's Association, stated that there are lots of incidences of discrimination in the Consortium transportation industry. However, he stated that much of the discrimination is based on nepotism and discrimination regarding language. He was told 10 years ago by the owner of a project that the owner could not hire TA #2's members because workers in the owner's crew only spoke Spanish, TA #2's members would not fit in because they did not speak Spanish, and it was a Spanish-only workforce. According to TA #2, the workers were working on a private public works project and the City of San Diego hired them to do some redevelopment.

**Most interviewees reported never having heard of or experienced discrimination in the Consortium transportation industry. (Interviewees #1, 3, 5, 6, 7, 8, 9, 10, 12, 16, 18, 20, 21, 23, 25, 26, 28, 29, 31, 32, 33, 36, 39, 41, 42, 44, 45, 48, 54, 57).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he was unaware of any acts of discrimination in the Consortium transportation industry. The only "discrimination" that he was aware of are decisions made based upon ability or the fact that someone cannot do the job or the fact that you just do not like someone (for instance the annoying driller) not based on race or gender.

**Sexual harassment**

**Some interviewees reported having heard of or experienced sexual harassment in the Consortium transportation industry. (Interviewees #1, 11, 14, 15, 17, 22, 24, 26, 49, 50, 55, 58, TA #2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he has seen sexual harassment on public sector projects. He stated he did not see how that would be different as between public and private sector because it is the same people doing the projects.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he had heard of sexual harassment in the Consortium transportation industry but declined to provide any examples.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has heard of sexual harassment in the Consortium transportation industry, but he noted that the majority of that conduct was in the early 1990s, much of which has gone by the wayside.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that she has heard of sexual harassment in the industry in the form of derogatory comments about females.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported having heard of sexual harassment in the Consortium transportation industry.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having heard of sexual harassment in the Consortium transportation industry and stated that he is aware that it goes on.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, had heard of sexual harassment in the Consortium transportation industry but could not identify any particular incident.

TA #2, the President of the Black Contractor's Association, stated that he has heard of one sexual harassment settlement approximately 10 years ago but has not heard a lot of other instances of sexual harassment in the Consortium transportation industry.

**Most interviewees reported never having heard of or experienced sexual harassment in the Consortium transportation industry. (Interviewees #2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 18, 19, 20, 21, 23, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 42, 44, 45, 46, 47, 48, 50, 52, 53, 54, 57, TA #1).** Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she has never heard of, or experienced sexual harassment in the Consortium transportation industry. Interviewee #11 stated that she did experience one incident of sexual harassment in the private sector seven (7) years ago.

### B. SDCRAA anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business

The following anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

**Perceptions regarding race, ethnicity, or gender effects**

**Many interviewees reported that issues related to race, ethnicity, and gender hinder the ability of firms to obtain or engage in business.** Interviewee #SD5, representing an African American male-owned firm, indicated that his race prevented him from joining a San Diego construction union: "Until 2002 blacks contractors could not get into the San Diego union. He continued, "I

tried to get into the union. I paid about $12 per month to stay on the list for about two years before I went into business. I was never accepted."

Consistent with those comments, SDTA #13, a retired official from a local public agency, stated that although local unions do not openly discriminate, they practice favoritism with regard to membership and they prefer members who are Caucasian males. SDTA #13 described the local unions as being based on "a good ol' boy system" and that union membership is "by invitation only."

Interviewee #SD16, representing an African American male-owned firm, indicated that, based on previous research and anecdotal stories from other local firms, he believes that discrimination still exists in San Diego. He reported that discrimination generally takes place in the form of prime contractors discriminating against subcontractors on the basis of race, gender, or age. However, those beliefs notwithstanding, Interviewee #SD16 indicated that the Airport and other agencies have treated his firm quite well.

Interviewee #SD10, representing an African American male-owned firm, said that racial discrimination affects the way he markets his firm. Specifically, he tries not to mention that his firm is African American-owned. Regarding that strategy, he said: "If I come up I will become a target to those who do not want to see a black man succeed."

Interviewee #SD2, representing a Caucasian female-owned firm, said that financing is much more difficult for a WBE firm compared to a male-owned firm, because most bankers are men. Interviewee #SD2 reported that particularly in the early years of her business, she had difficulty dealing with bankers and experienced gender discrimination: "[They would say] 'bring your husband in to sign the paperwork.'"

Interviewee #SD28, representing a Caucasian female-owned firm, reported that she started her own firm, because the firm she worked for previously made clear to her its stance that "a woman should [not] be in management."

When asked if his firm has been discriminated against based on the owner's ethnicity, Interviewee #SD36, representing an African American male-owned firm, said: "To be honest with you, of course I have been discriminated against. They will give you the contract, but in order to keep it I have to put the white person out there to be the front man." He continued, "Once they find out it is a black man behind the operation they will unfairly terminate the contract." Interviewee #SD36 reported that, "The City and County don't do this, but private [sector clients] do this all the time."

Interviewee #SD45, representing a Caucasian male-owned firm, indicated that women do not perform adequately as laborers and are better suited for operating equipment: "Women are great equipment operators — that's the best place for them to go. They make good wages, and it doesn't require superhuman strength."

Interviewee #SD46, representing an African American male-owned firm, reported that race is a substantial issue in his firm's industry: " … whether it's leasing a space, buying a car, [obtaining] a line of credit from supplies, [race is] a factor in everything we do."

SDTA #2, representing a Hispanic American trade organization, observed that approximately 50 percent of all construction workers in San Diego are Hispanic Americans and yet the vast majority of

construction firms are owned by Caucasians: "For example, [take the construction of] Petco Park – over one half of the workforce is Latino and most of the owners are white." SDTA #2 went on to say that even when constructions firms are Hispanic American-owned, those firms usually do not work as prime contractors.

SDTA #6, representing an Asian American trade organization, estimated that the Asian American population in San Diego is close to 12 percent. In contrast, she guessed that the percentage of contracts that go to Asian American-owned firms is less than 1 percent.

SDTA #4, representing a local chamber of commerce, said that there is not a level playing field for minority- and female-owned firms in San Diego, despite the fact that a large percentage of the population believes that there is. However, she indicated that she believes that society is making progress in limiting the effects of discrimination.

SDTA #8, representing an electrical workers trade organization, reported that across all construction sectors, women are severely underrepresented.

**Several interviewees reported that issues related to race, ethnicity, and gender do not affect the ability of a firms to obtain or engage in business.** SDTA #7, representing a construction trade organization, stated, "I do not think there is discrimination, and I'm not just saying that because of my position." He continued, "… I think when the baby boom generation came in [racial discrimination] pretty well dissipated. That's me and I think the next generation won't even know what we're talking about. We're electing a black man president. You can't tell me there's a lot of prejudice deep seeded in the country when we're electing Barack Obama now." He went on to say that there is a group of organizations in San Diego who benefit from having the public believe that discrimination exists in the construction industry.

Interviewee #SD14, representing a Hispanic American male-owned firm, repeatedly mentioned that, given Proposition 209 and the state of the economy, race and gender do not play a role in winning contracts — it is all about being low bidder.

Interviewee #SD33, representing a Hispanic American male-owned firm, said that when his father started the firm 30 years ago he experienced discrimination, primarily because he did not know a great deal of English. However, the firm was able to remain competitive and grow because it provided a quality product. He went on to say that there are such a large number of Hispanic Americans (and other minorities) in his firm's industry today that discriminating against them would be akin to discriminating against the entire industry — it would be too impractical.

Interviewee #SD34, representing a Caucasian male-owned firm, remarked that MBE/WBE firms do not need any help to be successful. He said, "If they are strong, they should be fine. They can learn from firms they worked with before starting their own businesses."

Interviewee #SD40, representing a Caucasian male-owned firm, reported that, to his knowledge, there is no discrimination based on race or gender in San Diego. He said that he has no knowledge of firms being denied the opportunity to bid, contract awards, financing or any other opportunity based on race or gender.

Interviewee #SD33, representing a Hispanic American male-owned firm, said that he thinks the contracting industry in San Diego is "an even playing field" with regard to race and gender.

Interviewee #SD44, representing a Hispanic male-owned firm, speaking generally about the effect of MBE/WBE status on a firm's success in his industry, remarked: "The people that are in our industry … are all very helpful to one another. It doesn't matter … what your ethnicity is." He went on to say, "I've had good experience in this business."

SDTA #6, representing an Asian American trade organization, indicated that she is not aware of any acts of discrimination against minority- or female-owned firms, but that those firms would be unlikely to file formal complaints about discriminatory acts even if they occurred.

SDTA #12, representing a workforce trade organization, indicated that his organization's members complain about hiring discrimination based on age but that he has not heard complaints about contracting discrimination based on race, ethnicity, or gender.

SDTA #13, a retired official from a local public agency, indicated that issues related to race, ethnicity, or gender do not make it more difficult to engage in business in San Diego — what matters is firm size: "People need to let go of [the idea that race, ethnicity, or gender affect success] and stop saying, 'Oh, it's because I'm black, or it's because I'm a woman, or it's because of this' and just realize that small businesses have a disadvantage."

**Some interviewees reported that minority- and female-owned firms have been afforded a number of opportunities because of their race, ethnicity, or gender.** SDTA #3, representing a local chamber of commerce, indicated that, in her view, MBE/WBE firms have a great deal of opportunity to succeed in the greater San Diego area. Regarding local opportunities for those firms, SDTA #3 said, "To me, there are so many resources out there that I think [MBE/WBE firms] actually have more opportunities [than majority-owned firms] at times." She went on to say that race and gender typically do not play a role in the local marketplace, and what matters is each person's work ethic, "I haven't heard of any problems [related to race and gender]." She continued, "To me it's not your gender, it's not your race — it's your work ethic and what you decide to be. Any opportunity we can give them to be successful is there. …" Speaking more generally, she indicated that racism and sexism are not as problematic as they were in the past. With regard to racism, she said, "We've come a long way." With regard to sexism, she commented, "Twenty years ago … there was a different pay scale [for men and women], but I believe those days are gone."

SDTA #7, representing a construction trade organization, expressed his belief that there are no barriers in construction specific to minority- or female-owned firms. He said, "We do all these nice things [i.e., agencies' remedies], but cutting through all that, you got to train people to be contractors and [the] market will probably take care of its self. There isn't a real barrier — that I can see anyway — for minorities getting to be a contractor." He went on to explain that the determining factor for success in construction has nothing to do with race — it is about taking chances: "You got to be a young guy and want to run out and take a chance. … Does some African-American or Hispanic guy take that chance to quit that nice project manager job [they] got? … The first thing you got to have is the guts to do it."

Interviewee #SD24, representing a Caucasian male-owned firm, indicated that he has not observed any manifestations of discrimination against minority- or female-owned firms, and he said that

instead DBE programs have afforded them a number of advantages: "If anything I think it's the opposite [i.e., MBE/WBE firms are advantaged], because there are often DBE related requirements. Firms like that tend to be courted more than anything else."

**Work environment**

**Some interviewees indicated that the work environment for minorities and females working in San Diego is less favorable than it is for Caucasian males.** Interviewee #SD2, representing a Caucasian female-owned firm, reported that it is difficult for her firm to develop relationships with prime contractors, precisely because her firm is female-owned. She said that there have been instances when she had to bring a male employee from her company to meetings with prime contractors so that they would treat her with more respect. She indicated that there is an aversion to women in the construction industry.

Interviewee #SD17, representing a Caucasian female-owned firm, reported that she has been the victim of gender discrimination on a number of occasions. She indicated that sometimes that discrimination has been subtle, but other times it has been blatant. Regarding subtle discrimination, Interviewee #SD17 said, "As a woman, I am aware of unspoken discrimination. For example, contractors will automatically call and ask for my husband Jeff to come to the job even though my name is on the company and I am the president." Regarding blatant discrimination, Interviewee #SD17 indicted that some contractors have been quite audacious with her on the telephone: "One client called and said he would give our company a [contract], but only if I was hot." She also said that her firm has worked on a project for which the foreman told her that he refuses to work with women.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that an unfair work environment continues to exist from time to time for MBE and WBE firms. He gave an example of women contractors not commanding as much respect as their male counterparts.

Interviewee #SD21, representing a Caucasian male-owned firm, is aware of rampant, race-related graffiti being present on some of his work sites. He referred to the construction industry as a "jungle environment," and as such he acknowledged that more could be done to help minority- and woman-owned contractors in the field. However, he also pointed out that those firms are making good progress in today's construction industry. He said that many more MBE/WBE contractors have college degrees today than in decades past, and those contractors are either running construction companies themselves or are playing integral roles in someone else's construction company. He said, "Things are evolving so that the playing field is much more [level]."

Interviewee #SD32, representing an African American male-owned firm, reported that many people in the construction industry are "not necessarily racist, but prejudiced in general and make [discriminatory] remarks." He indicated that although such remarks are unpleasant, he does not think his firm has lost any work because of the owner's race. With regard to women, Interviewee #SD32 said, "I think due to the nature of construction being dominated by males in general … it's hard for women to come into an industry like this and be accepted as peers."

Interviewee #SD34, representing a Caucasian male-owned firm, commented that women-owned firms encounter problems in the contracting industry because, "there are still men out there who think it's a man's world." He noted that minority-owned firms also encounter difficulties.

Interviewee #SD34 reported that he has witnessed contractors making inappropriate comments toward both minorities and women on job sites.

Interviewee #SD39, representing a Hispanic female-owned firm, reported that the work environment is particularly unpleasant for Hispanics working in his firm's industry: "Discrimination is going on with the drivers because they don't speak very good English."

Interviewee #SD47, representing an African American female-owned firm, stated that eight of her own employees were recently terminated for using the "N" word and making derogatory comments about her and her brother, the firm's Operations Manager. She said that her firm has retained the services of a well-respected diversity consultant to address her firm's race-related difficulties. Interviewee #SD47 also reported that the "N" word was directed at one of her employees on a work site in the private sector during a project on which her firm was working as a subcontractor.

SDTA #5, representing a government advisory commission on minority issues, indicated that public agencies in San Diego actively prevent minority- and female-owned firms from being successful: "San Diego creates barriers for people to get involved and does the same thing over and over until the good ol' boy network can pretty much kill off small and black-owned or other ethnic-owned businesses. … There is no consequence for not doing outreach or supporting diversity in San Diego." She went on to explain that racism is a substantial issue in San Diego but that the city makes an effort to hide those problems: "San Diego is bona fide racist — that is it! San Diego reports themselves as the finest city, but indicators of harsh racism are hidden."

**Stereotypical attitudes**

**Several interviewees indicated that MBE/WBE firms are sometimes victim to stereotypical attitudes on the part of prime contractors or agencies.** SDTA #10, representing a supplier trade organization, said that some of the personnel at public agencies believe that MBE/WBE firms are less qualified than large, well-established firms and that their participation generates additional costs. SDTA #10 said that many of those people believe there are "no good MBEs out there." He remarked, "These individuals should be open to accepting that there are, in fact, good [MBE/WBE] firms and that their utilization does not increase costs."

Interviewee #SD21, representing a Caucasian male-owned firm, indicated that minority- and female-owned firms still face stereotypical attitudes in the construction industry but that the problem is relatively small. He said, "You'll get an old inspector … they're not necessarily too enthused when a woman project manager rolls in."

Interviewee #SD20, representing an Asian American male-owned firm, reported being aware of prime contractors and agencies having stereotypical attitudes about minority- and female-owned firms but only in subtle, indirect ways.

Interviewee #SD28, representing a Caucasian female-owned firm, reported that she has often been victim to prime contractors having stereotypical attitudes against women in which "they don't think you know anything because you're a woman." In describing how she deals with those situations, she said, "If I swallow my pride, I just give [the phone] to [a male member of the firm] and [he] tells them the same thing that I would tell them."

Interviewee #SD43, representing a Hispanic male-owned firm, said that agencies and prime contractors sometimes assume that Hispanic-owned firms will hire illegal immigrants or cheap labor to complete the work.

Interviewee #SD46, representing an African American male-owned firm, indicated that sometimes subcontractors appear to question his firm's ability to act as a prime contractor due to his minority status. He said that some subcontractors seem to wonder "Can this guy pay me? Is he for real?" He went on to say that when he goes on job walks, he gets the sense that other firms look at him and wonder, "Are there goals on this project?"

Interviewee #SD47, representing an African American female-owned firm, indicated that there is a stigma associated with being DBE certified that the firm is unqualified: "I'd heard so much about the stigma of these certifications … [Other firms in the industry] talk about how unqualified [DBE certified] firms were and how they couldn't perform." She went on to say that it is very difficult being an African American woman in the construction industry: "In this industry, if there is a white male with me, … they could be the driver … they're going to get more respect than I will. If it's a Black male, they'll get more respect, too. If it's a white female, they're going to still be addressed and interacted with more than me. I'm always the low man on the totem pole."

### C. Caltrans anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business

The following anecdotes regarding the effect of race, ethnicity, and gender upon a firm's ability to obtain or engage in business were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

#### Perceptions regarding race, ethnicity, or gender effects

**Few minority or female-owned businesses feel that race, ethnicity, or gender hindered their ability to obtain or engage in business.** CATA #1, an Asian American trade association, stated that there are "serious" but subtle personal barriers to getting work in both the private and public sectors and with all public agencies. These barriers were not obvious but instead existed deep in people's minds and hearts. According to CATA #1, the problem is not so much that people do not like DBEs, but that non-DBE firms do not trust DBE firms because they do not know them.

Interviewee #CT44, a Middle-Eastern male-owned firm, feels there are barriers to pursuing work that he believes are due to his race. He has not experienced blatant discrimination, but he hears things like "we need someone with more experience" or what he views as other "sham" excuses. He feels that frequent change orders may be related to his race. He never files complaints because he cannot afford an attorney.

Interviewee #CT7, the Hispanic co-owner of a white female-owned firm, believes race affects his ability to engage in business in that he does not receive certain RFPs. Interviewee #CT7 spoke of the attitudes of some of the older engineers at Caltrans who were hesitant to accept women and people of color coming to work as Caltrans engineers. Interviewee #CT7, the white female-owner, stated that one time while working on a Caltrans project an engineer put a hand in front of her face when she was trying to explain something to the Caltrans project manager. Interviewee #CT7 feels that things

would change "once this kind of generation is gone" and more Hispanic and Asian engineers filled the ranks at Caltrans.

A female certified DBE firm submitting written testimony stated "there are not just difficulties in bidding projects as primes and subs, it is to the point where nothing short of an outright set-aside contract in conjunction with litigation is going to change the mindset and negative attitudes of the staff working in the transportation industry." She stated that "based upon my gender or status as a certified DBE firm, however you want to put it, we are treated like an old shoe that 'should not be at the table' and 'would not be at the table' if there wasn't a goal to meet or a client who specifically requested us." She stated "no one is going to give a woman a large transportation project." (Written testimony submitted 3/8/07).

CATA #11, a minority trade association, believes his race affects his ability to obtain or engage in business. "It happened yesterday … when I walk on a job site everyone wants to know what I'm doing there … if an older white guys walks onto a job he could walk all the way through it and no one would ask him anything … but once you get there and they know who you are then they aren't going to say that." "It's just human nature … they already have an idea about certain people … you have to go in there and prove yourself right off the bat … show them you have some credibility and talk with some sort of sense and it gets smoothed over a lot."

A white female-owned construction business certified as a DBE since 1981 and representative of the Women Construction Owners and Executives testified at a public hearing in San Diego "if you ask the question is there discrimination, I have to say yes, yes, yes. There are many, many difficulties and barriers to women and minorities. And I have to tell you that without any race-conscious measures, government agencies experience sharp declines in participation … when there are no goals on projects, it reverts back to the good ol' boy group that's always been there." She further testified "construction is a traditionally male-dominated field, and we have had to climb many walls." (P.H. San Diego, 3/22/07).

A WBE, submitting written testimony, stated that she worked for a competitor in San Diego for 16 years and the new owner told her they "didn't want a woman in Management [because] they thought contractors like to deal with men, point blank." She stated that she thought if she sued she was "sure if I did I would never work in construction again." (Written testimony submitted 1/26/06).

A Hispanic woman-owned engineering firm, stated that without a DBE or similar program, DBEs do not have a chance to participate in State contracts. She went on to say, "Discrimination still exists in the heart and, thus, hard to prove, but I assure you, discrimination remains ALIVE AND WELL." (Written testimony submitted 3/8/07).

A certified DBE, submitting written testimony, stated "Although discriminatory practices are prevalent in the contracting industry, it is practically impossible to prove that the discrimination is based solely on considerations of race, ethnicity, and/or gender." (Written testimony submitted 4/12/07).

**Some white male-owned firms feel that their race negatively affected their ability to engage in business.** Interviewee #CT65, a white male-owned firm, believes that his race has affected his ability to engage in work with Caltrans. He feels that he has been intentionally discriminated against, especially when the trucking brokers came on board. Because there were not many white workers in

his industry when he was doing Caltrans work, he was looked down on and treated as though he was a minority. He thinks he is passed over by prime contractors who are looking for DBEs to fill a quota. As to other agencies and in the private sector, he does not think that he has been discriminated against on the basis of his race. Interviewee #CT26, a white male-owned engineering contractor, discussed an experience he had in 1991 when Caltrans awarded a job in Humboldt County to a DBE firm whose bid was higher than his ($42,000 compared to $28,000).

**Some of these non-DBE firms feel they have lost work to DBEs.** Interviewee #CT34 said, "I may be able to think of some instance where our biologists weren't used because they had to use biologists from a DBE firm, but I can't think of any examples. I mean, I think you'd be hard pressed to say that you're at a disadvantage for being Anglo-Saxon."

**Some minority and female-owned businesses did not feel that race or gender affected their ability to engage in business (CT Interviewees #1, #6, #11, #29, #48, #81, CATA #7).** CATA #7, a Filipino trade association, believes DBEs are able to compete fairly with small non-DBE businesses, but not large non-DBE or DBE businesses.

Interviewee #CT1, another Native American male-owned firm, does not think his race affects his ability to obtain or engage in business. He stated he thinks his gender may be an advantage "although it's hard to say for sure, but I would assume some advantage," however, he feels it is probably limited to the private sector.

Interviewee #CT6, a white female-owned firm, does not feel her gender has affected her ability to engage in business. Interviewee #CT67, a white female-owned firm, said that, though she worked in a male-dominated field, she did not ever feel discriminated against. Interviewee #CT32, an Asian American female-owned company, did not believe her race or gender affected her ability to obtain or engage in business in either sector.

Interviewee #CT79, another African American male-owned firm, does not feel his race has affected his ability to obtain work in the transportation industry. He noted that he has a very "white" sounding name and thinks this makes a difference in his attempts to secure contracts. However, a prime has never refused to work with him simply because he is African American.

Interviewee #CT29, a Hispanic male-owned firm, does not believe that his race has affected his ability to obtain business, but stated that his biggest hurdle is being an unknown.

An African American male-owned small printing business testified, at a public hearing in Los Angeles, that "the discrimination that continues today has nothing to do with race. It may very well have something to do with gender. I do think that women have an unfair advantage in this process" due to female fronts. He went on to state "I don't believe there's a lot of racism existing in these programs anymore … we got rid of the racist system, and now we've got a system of cronyism. And all of us are not cronies." (P.H. Los Angeles, 4/4/07).

**Some minority firms feel that their race helped them get business (Interviewee #CT46).** Interviewee #CT46, an Asian American male-owned firm, did not think that his race had ever negatively affected his ability to obtain or engage in business with Caltrans or anyone else. In fact, said Interviewee #CT46, "it's been just the opposite to be honest with you" because if there is a DBE requirement on Caltrans or other work, DBE firms are sought out for work.

**Some minority or female-owned business were "not sure" whether their race, ethnicity, and/or gender affected their ability to engage in business, but suspected it had some impact.** CATA #3, a Hispanic trade association, said it was "hard to say" whether or not race or gender had ever affected his members' ability to get work. He stated that Hispanics were not well represented in Caltrans work, and that District 7 should focus on bringing in more Hispanics, both internally within Caltrans administration and staff and in Caltrans contracting and procurement practices, especially in the professional services arena. CATA #3 did not feel "militant enough" to press this issue with Caltrans or the District Director and that, outside of the above, he did not know about race affecting his members' ability to get business.

Interviewee #CT31, an African American female-owned firm, answered, "I would never know that … things are really subtle now, and it is not overt anymore. It is pretty much you go into a meeting and you can kind of tell by body language whether you're going to be accepted or not. Our biggest problem is getting our foot in the door, because once we get our foot in the door and we can show that we do a good job, then it is a marketing issue. But getting the foot in the door is tough."

Interviewee #CT51, a Hispanic male-owned firm, stated that he could not answer whether his race had ever affected his ability to get work with Caltrans or anyone else. He said that, "hell yes," there is prejudice in the world and that "anybody that thought there is not is lying . . . ." but that he could not answer whether this prejudice had affected him, and he chooses to believe that it has not. Interviewee #CT51 stated that it was difficult for anyone to break into the California transportation industry, especially minorities.

**Some minority and female-owned business feel that race or gender did not affect their ability to engage in business in the public sector but did affect their ability to engage in business in the private sector.** Both Interviewees #CT10 and #CT49, African American male-owned firms, stated that their race had never affected their ability to get business from Caltrans or other agencies, but that it had affected their ability to get work from prime contractors — mostly in the private sector. Interviewee #CT49, an African American male-owned firm, attributed this "discrimination" at least in part to there being so few African American contractors in the California transportation industry, stating that "because they do not see a lot of African Americans out there in the industry,… they do not have a way to gain confidence."

CATA #2, an African American trade association, said that he did not think that race had affected his members' ability to get work with Caltrans, but that it had affected their ability to get work for prime contractors and in the private sector. He also said that his race had affected his company's ability to get business with local governments whose agencies and the contractors they hire "take on the flavor" of the local city or county. For example, said CATA #2, the City of Pasadena does not award many contracts to firms owned by people of color. He said that this latter issue was "still pervasive."

**Work environment**

**Some white male-owned firms viewed the industry as open and accepting.** Interviewee #CT9, a white male-owned company said "I think it's unlimited" and "I don't see any barriers for any race, creed, color, or ethnic barriers in the [engineering] profession."

Asked to describe the work environment for DBEs, women, and minorities in the California transportation industry, Interviewee #CT17, a white male-owned firm, said "I think the field is so

wide open now, the sky's the limit with anybody that wants to work in this business. If they're bright and they want to work hard, the sky's the limit. There's no limitation on a woman or any minority that I know of, certainly not in my firm." Interviewee #CT17 stated also that he had never experienced any stereotyping, offensive comments, discrimination, sexual harassment, or complaints about other offensive behavior in the California transportation industry.

Interviewee #CT34, a white male-owned firm in business for 70 years, stated that he had seen things change over the course of his career to the point where now he did not see "any appreciable difference in the treatment of minority or female contractors or staff at all." He stated also that "a high level of diversity in transportation work is just a given now," but also noted that "that's a product of where we are," indicating that things might be different in other geographic areas. Interviewee #CT34 said that his company, being a company of 1500 people, sometimes has to deal with complaints about sexual harassment, discrimination, and other offensive behavior or comments internally, but he thought that this was "probably the same as it is with any industry" and said that the company is "very proactive about maintaining . . . [a] diverse, tolerant work environment."

Interviewee #CT66, a white male-owned firm, replied that it "seems like sometimes [DBEs] have a little advantage" but also that he could not "really comment too much on that" and that he "d[id]n't really know." He stated that women drivers in his business were sometimes looked down upon because people think that truck driving is a man's job. Interviewee #CT40, a white male-owned firm indicated that there is little trouble for women and minorities in the industry.

Interviewee #CT75, a white male-owned firm, believes that DBEs are treated no different than non-DBEs, except for the preference DBEs are afforded upfront. After that, everyone is treated the same.

**Several interviewees mentioned that price, not race or gender, is the motivating factor for primes in selecting subcontractors.** Interviewee #CT45, a white male-owned construction firm, stated that in the public sector general business factors affect the work environment for a firm, but not race or gender: "you have to know the business, the work you are quoting on, and you have to have financing and be strong enough to carry your payroll and equipment for a month or two." He stated with "the business we are talking about, all you have to do is be low bidder and have a bid bond."

**Some DBE firms also feel that the work environment was generally good.** Interviewee #CT39, a Hispanic male-owned firm, replied that "It's not perfect, but we had the program there that helped us out . . . ." He went on to say that he thought there were "a few jobs" that the company could have received or "at least had a better shot at" if the DBE program had not been suspended. Interviewee #CT46, an Asian male-owned electrical construction company certified as a DBE with Caltrans, replied that he did not "see any difference if you were you a minority or not" and that he did not think that "conditions are any better or worse if you're a minority."

Interviewee #CT79, an African American male-owned firm who is not certified as a DBE with Caltrans, knows of a couple of certified entities that are doing relatively well with Caltrans. Interviewee #CT44, a Middle-Eastern male-owned firm, stated that his overall experience with the work environment for minorities in the California transportation industry has been good.

Interviewee #CT49, an African American male-owned company, emphasized the importance of opportunity. He viewed his success as an exception more than the rule because he had knowledge and experience from working in the industry for many years before starting his own business. In his

opinion, he was able to take advantage of opportunities not available to others, but most African Americans were not able to get the same kind of experience that he had and that created more opportunities for him than would have otherwise existed.

**Some trade associations classified the work environment as positive while stressing the continued relevance and importance of government assistance programs.** CATA #2, an African American trade association, feels that the work environment was for the most part good, but stated that the government needed to stay involved to make sure DBEs continue to be utilized. CATA #2 said that in his own experience, he found that prime contractors preferred working with firms owned by white women than ethnic minority-owned firms, such as his company. He said he had no experience with or knowledge of overt stereotyping, discrimination, or sexual harassment in the California transportation industry.

CATA #3, a Hispanic trade association, stated "there's a lot of opportunity" for DBEs, people of color, and women in the California transportation industry, but that everyone needs to push harder for work." According to him, "there's a lot of work, and we need to get a piece of it." He said that this would require the association's members to be aggressive on both the marketing and advocacy fronts, and that this advocacy and marketing is critical for DBE firms because there is an "unequal playing field." He also said that Caltrans needs to look at bringing in more Hispanics and African Americans on its jobs because they are the most underrepresented.

**Some DBE firms feel that DBE firms were held to a higher standard than their non-DBE counterparts.** Interviewee #CT33, a Hispanic female-owned company, used the word "tolerated" to describe the work environment for DBEs in the California transportation industry. She said that they were not "welcomed with open arms" and that she thought some firms viewed DBEs "as a necessary evil" because they would rather not share work with DBE firms but do so because "Caltrans has a certain percentage." CATA #1, an Asian American trade association, described the work environment for DBEs as "very very tough" and said that DBE firms "have to be out there fighting all the time, as opposed to white [firms] . . . [that] just flow through."

CATA #7, a Filipino trade association, states that DBEs are held to a higher standard; they are scrutinized more than non-DBEs. If they make a mistake, they are not given the benefit of the doubt. On the other hand, if they do good work they will continue to be utilized. CATA #7 would like Caltrans to set aside certain work for small businesses, regardless of race or ethnicity, since all small business face the same challenges. The governor has expressed an interest in encouraging all small businesses.

## XI. Percieved General Barriers to Participation in the Public and Private Sectors

### A. Consortium anecdotes regarding perceived general barriers to participation in the public and private sectors

<u>Barriers to pursuing work with the Consortium</u>

**Some interviewees identified agency unwillingness to work with new companies, including DBEs, as a barrier to pursuing work with the Consortium. (Interviewees #12, 13, 16, 32, 47).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, identified

"closing the network to the point that new DBEs cannot come in" as a barrier to pursuing work with the Consortium. He stated that this has happened in some cases. He stated the Consortium could counter this by introducing a "mini goal" within the DBE goal to require that a portion of DBE participation be new DBE participation (i.e. DBEs who have not worked with the Consortium before).

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that for a long time he was unable to get any work from OCTA; he heard that OCTA does not like to work with new companies.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that there are barriers in pursuing work with the Consortium because there are problems with opportunities. Interviewee #16 noted that there are definite problems with "getting his foot in the door." Interviewee #16 also noted there are issues associated with the timing of opportunities that create barriers for small business.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that small, start-up companies have a difficult time getting work. He stated that they need to be able to get a "piece of the work" to show that they can do the job.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that in the Consortium and in the non-Consortium public sector and private sector, small minority firms are not given a fair chance. He stated that small companies are blocked from getting contracts and the same people always get the contracts.

**Other interviewees identified multiple miscellaneous barriers to pursuing work with the work with the Consortium.** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that there are no more barriers for DBEs in terms of pursuing work with the Consortium, other agencies, or the private sector than there are for any other entities. If a prime contractor has work and the DBE does good work, the prime contractor will use them. Interviewee #3 stated that the only barrier is that there are not enough DBEs.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, explained that the L.A. County MTA's SBE Program has a net worth cap of $250,000 as compared to a cap of $750,000 in the federal program. He stated that he has prime contractors who would love to use his business, but are unable to and who have a problem fulfilling their SBE requirement due to the monetary threshold.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, identified "political challenges" as a barrier or obstacle to pursuing work with the Consortium. He stated that "people hold political grudges." He stated that his company had challenges in the past with one member of the Consortium, and he does not know if it was because his company was a DBE or the representative of that member of the Consortium "wanted their friend in." He stated that his company was "kicked to the side" to the point that the Board "took action." He stated with respect to the Consortium agencies, there is a perception that a company can only do business with a given agency if "you are from that area." In contrast, Interviewee #14 stated that in the private sector, you are the "same as everybody else. If you know your industry and have a good product and talent" then there is a possibility of work.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, felt there were barriers to pursuing work, but could not identify any.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there are barriers to working with the Consortium (and in the non-Consortium public sector and the private sector), but declined to identify any specific barriers.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, reported that she receives very little work from Consortium member agencies. She stated that she has worked for L.A. County MTA for the past seven years but after her last project, they told her they would be using another firm with better rates. Interviewee #36 stated that the new company does not have better rates and is not a DBE, but they were permitted to negotiate a contract with L.A. County MTA. She thought it was unfair that this company could negotiate a better deal with L.A. County MTA while Interviewee #36's firm was not permitted to submit a new bid. She stated that she is on a certification list, but she does not believe that the available work is properly rotated among the certified companies.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that "the two transportation agencies in San Diego and Orange County have no goals or requirements to do business with [DBEs]." He identified this as a barrier.

**Several interviewees indicated that there are no barriers to pursing work with the Consortium. (Interviewee #4, 5, 6, 9, 22, 23, 24, 26, 28, 33, 38, 39, 40, 41, 42, 44, 45, 48, 49, 52, 53, 54, 55, 56, 57, 58, TA #2.)** Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has been in business for so long that the barriers have been eliminated.

**Barriers to pursuing work with other non-Consortium public sector agencies**

**A couple of interviewees identified the absence of race-, ethnic-, and gender-based goals as a barrier to pursuing work with non-Consortium public sector agencies. (Interviewees #12, 46).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that when Caltrans went race-neutral a lot of the local agencies implementing federal projects no longer required strict compliance with DBE goals. He stated that on a recent contract, his company was the low bidder and the "highest DBE firm" (the prime contractor), but the agency awarded the contract to another company based on "preferences." He stated that that the individual on the selection panel was a former employee of the company that won the contract. He stated that also during that interview, the individual leading the interview told them that "DBE is not that important anymore." To him, "it was like a slap in the face" because it was a federally-funded contract and the RFP clearly stated there was a 10 percent DBE goal.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the absence of goals on projects in Santa Monica, San Diego, or Orange County Transit Agencies is a barrier to pursuing work.

**Other interviewees identified multiple miscellaneous barriers to pursuing work with non-Consortium public sector agencies.** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that with respect to other agencies, sometimes large scale projects are so huge that even large scale prime contractors cannot handle it; they have to partner with another firm to handle the project. Interviewee #4 stated that it would be helpful if the owner agencies were able to break up huge projects into smaller ones and thereby create more opportunities for smaller firms to participate. For example, a county water authority is embarking on a project that will start in 2009 whereby they will raise the dam on one of the reservoirs; that is a huge project worth $600 million or more. It is so big that even the prime contractors who go after it pair up with other prime contractors. He explained that the problem is most prime contractors have enough in-house capabilities that they could do the work themselves or 95 percent of the work, and there is very little to subcontract which means that DBEs are left out. If projects that big could be broken up into smaller projects, Interviewee #4 stated that would help.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, stated that as for other agencies, permit fees are a barrier to pursuing work with the county government. The county shut down Interviewee #6's company because of his failure to obtain a site plan for his property at a cost of $60,000 to $100,000.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that the way that non-Consortium agencies draft their RFPs is a barrier to pursuing work; the RFPs are "targeted."

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he is a very small business and has not been successful on his attempts to work with prime contractors. He stated that he has the requisite licenses, experiences, etc., but there is no one to assist him in obtaining work. He stated that it would be great if someone could find a way to streamline and simplify the process in order to help out good contractors.

**Several interviewees indicated that there are no barriers to pursing work with non-Consortium public sector agencies. (Interviewees #2, 5, 22, 23, 24, 26, 28, 33, 38, 39, 40, 41, 42, 44, 45, 48, 49, 52, 53, 54, 55, 56, 57, 58).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he has not heard of any barriers or obstacles to pursuing work with other agencies; he believes that those with DBE certification have the benefit.

**Barriers to pursuing work in the private sector**

**Several interviewees identified networking as a barrier to pursuing work in the private sector; some reported that in the private sector, receiving work is dependent on "who you know." (Interviewees #2, 4, 5, 10, 12, 22, 31, 32, 33, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that in the private sector, the primary barrier is networking and marketing.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that in terms of private sector, the barrier is that the prime contractors do business with the same companies over and over; it is always "who they know."

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business, stated that although he has never seen any barriers or obstacles to pursuing work in the private sector, he did state that work is based on the relationship that you have with people. If his company does the job and the prime contractor likes what he does, they bring him back. Interviewee #5 stated that there are no issues about being a small business or DBE in the private sector.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that they do not know where the private sector work is or who the prime contractors are in order to solicit work.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that obtaining work in the private sector is dependent "on who you know" and it is very hard to get in to the network unless you have had prior experience. He stated obtaining work in the private sector is more based on luck than anything else.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the tendency to team with friends is a barrier to pursuing work in the private sector.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he suspects that in the private sector the prime contractors already know who they are going to work with. He stated that in addition, unless you bid the project extremely low, you will not get the contract. He stated that he cannot figure out how some firms are able to bid so low unless they are not paying decent wages or payroll taxes. He indicated that the prime contractors now are frequently self performing, which cuts out a lot of subcontractors.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that there are the same obstacles to pursuing work in the private sector as there are with other agencies — contractors will only use those subcontractors with whom they are familiar and have a relationship.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that there are barriers to pursuing work in the private sector but occasionally you can approach the prime contractor, although they already have their team put together, and ask them to take another look at their team and consider working with your company.

TA #2 stated that private sector projects are pretty open. Owners choose contractors based on their comfort zone and feeling that the contractor is competent.

**Other interviewees identified multiple miscellaneous barriers to pursuing work in the private sector.** Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that obtaining financing is a barrier or obstacle to pursuing work in the private sector.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the lack of regulation in the private sector could also be seen as a barrier because the evaluators are not always fair, but he stated that that occurs in the public sector as well.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the private sector has no responsibility or goal requirement to utilize her firm; they will only utilize her firm if they have to. She stated that no matter how hard she tries to obtain work, and with all of her experience, she is still unable to obtain work in the private sector. She stated that the private sector firms have their own teams.

Interviewee #29, an African American male-owned electrical contractor, stated that there are few opportunities for small businesses and people want to hire "name brand" companies.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that her firm is not able to provide the same perks for her clients as are other firms; this may be a barrier to pursuing work in the private sector.

TA #1, the President of the Latino Business Owners of America, stated that there are barriers or obstacles to pursuing work in the private sector, but they are not as prevalent as in the public sector. He stated that it is more competitive in the private sector and the work is more spread out.

**Several interviewees were unaware of any barriers to pursuing work in the private sector. (Interviewee #1, 6, 9, 23, 24, 26, 28, 38, 39, 40, 41, 42, 44, 45, 46, 49, 52, 53, 54, 55, 56, 57, 58).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that there are no barriers to pursuing work in the private sector. He stated that they try to get work, and if they do not get the work, they try to figure out why they did not get the work.

**Some interviewees reported the impact that the unions have had, if any, upon their businesses.** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that unions have not had an impact on his business.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that the L.A. County Union has positively impacted her business because they hired her to do a project for them.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, did not identify any issues caused by unions.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, has not had any issue with the unions.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that unions have directly impacted his ability to engage workers and get certain jobs because of Davis-Bacon wages and the use of non-union contractors. His company has a strong set of union card carrying members because Interviewee #15 couldn't oppose the union.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, noted that unions do have an impact on a DBE's ability to pursue, engage in, and obtain work. Davis-Bacon pay scales and rates are much better so union work is favored according to Interviewee #16. Interviewee #16 has not experienced any obstacles or barriers to work due to a union.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she knows unions in the construction industry have had an impact on some companies, but not her company directly.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, had no experience with unions affecting her ability to work in any way in the industry.

**Some interviewees relayed their experiences as, or with, suppliers and whether their experiences have been affected by their DBE certification.** Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that she has not experienced any barriers regarding licensing agreements, pricing or distribution arrangements with manufacturers. She stated that she is able to obtain competitive prices for supplies and was not aware of a supplier giving a DBE firm less favorable pricing.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated he has experienced barriers regarding licensing agreements or distribution arrangements with manufacturers and distributors. He stated that it was clear discrimination in that certain distributors will refuse to quote prices to subcontractors. He is not able to obtain competitive prices for supplies all the time; he stated that sometimes the supplier refuses to quote. He was aware of situations when suppliers have given DBEs less favorable prices or treatment.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, does not feel as though he has had any issues with his suppliers. They have told him that business is slow for everyone right now. He feels he gets the same prices as everyone else gets from his supplier. Interviewee #31 is not aware of any suppliers giving DBEs less favorable prices or treating them unfairly, especially with the state of the economy and the industry, they are just trying to stay above water.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he has not had any negative experiences with the manufacturers of his cleaning products. He has been successful in negotiating good prices for his products; he is not aware of suppliers or wholesalers giving less favorable prices to DBEs.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she has not experienced any barriers regarding licensing agreements, pricing or distribution arrangements with manufacturer or distributors. She stated that she is able to obtain competitive pricing.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that he has been able to obtain competitive prices for his supplies and has not experienced any barriers regarding licensing agreements, pricing, or distribution arrangements. He is not aware of a supplier or wholesaler giving less favorable prices to DBEs and stated that if he was he would report it.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, had never experienced any barriers with respect to licensing or distribution agreements or pricing. She is able to obtain competitive prices for her supplies and was not aware of any manufacturer or wholesaler giving DBEs less favorable prices or fair treatment.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that for the most part his experience obtaining supplies has been okay and he purchases his petroleum products directly from the refineries. In the past he has been unable to obtain competitive supplies for his prices, but now he is able to. He was aware of refineries giving more favorable prices to Caucasian-owned companies.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, noted that sometimes the manufacturer will fill large orders first and his smaller business has to wait on supplies; this would hurt their business and their reputation. He was not aware of any suppliers or wholesalers giving less favorable prices to DBEs.

**Good ol' boy network**

**Several interviewees reported having been closed out of an opportunity because the prime contractor utilized a subcontractor within its own network (Interviewees #1, 2, 3, 4, 7, 8, 9, 12, 13, 14, 16, 17, 18, 20, 21, 22, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 45, 46, 48, 49, 52, 56, 58, TA #1, 2). Many of these firms indicated that "it happens all the time." Several firms, however, noted that this is due to the prime contractor's comfort level with the subcontractor based on their past relationship.** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he has been closed out of an opportunity because the prime contractor used a subcontractor in his own network; he stated that "it happens all the time." He stated that when a prime contractor finds a subcontractor that he likes to work with, he will very rarely deviate from that. He stated that at his old company, they would have members of the company bid the contract under different names to ensure that someone within their own network would get the job.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he feels he has been closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He says it happens all the time. He stated that this occurred about six months ago. There was a private warehouse design project that came up and Interviewee #2 approached the developer, submitted his company's profile, and it never came to fruition. He stated that the contract was awarded to another structural engineer that the developer had worked with.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated businesses are often closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He stated that it happens all the time, whether the firm is a DBE or not. He stated that prime contractors use a subcontractor with whom they have become comfortable. Interviewee #3 stated that the use of DBEs is not required in the private sector, so if you have a non-DBE who a prime contractor is experienced with and a DBE who it is not experienced with, the prime contractor might use the non-DBE.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he is sure there are occasions where his business has been closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network, but there is no way to prove it. He did not know of any specific occasions or specific projects. Interviewee #4 stated he has done a fair amount of work on county water authority projects within the last five years, the list of projects that he has worked is more than a page long, so he has

the experience. But, he explained, certain prime contractors that go after these projects never call his company or invite his company to be on their team nor does he ever receive a courtesy call from those prime contractors requesting that he submit qualifications. Interviewee #4 stated that he wonders what the reason is, and he knows it is not because of his capabilities or lack of experience. He stated he does not know why he does not get this work other than that firms have a special relationship with other subcontractors.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has known subcontractors who were cut out of a project because the general contractor did not have experience with them and chose to use a subcontractor within its own network. Interviewee #7 stated that this has happened as recently as the past few months on non-Consortium projects. Interviewee #7 stated that most contractors go with someone who is competent and the question is whether to take a risk on someone new who has no record.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he has been closed out of an opportunity because the prime contractor used someone within its own network. In the private sector, his perception is that the prime contractor has a relationship with another subcontractor and will tend to use the other subcontractor irrespective of low bid. In the public sector, Interviewee #8 has had the strong feeling that the public agency staff would never select a small firm like his over a large firm because the staff-member could then have an opportunity to work for the large firm when they leave the public sector.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that his business has been closed out of an opportunity because the prime contractor used a subcontractor within his own network. He stated that it is usually understandable when that happens because it is due to friendships and past relationships. Interviewee #9 stated that some non-Consortium agencies do not like them but "it is a free country."

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that it is "common" to be closed out of an opportunity because the prime contractor uses someone within their own network. He stated that there are some affiliations that you cannot break. The only way to break such affiliations is to build close ties with the ultimate client who can then advise the prime contractors as to who they should hire.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has felt closed out of an opportunity because a prime contractor used a subcontractor within their own network. He stated that he has attended some procurements and found out that certain prime contractors are going to bid on large contracts. He stated that his business could help them but the prime contractor often has their standard team in place. He stated that he has felt "locked out" of opportunities to work with those prime contractors. Interviewee #13 stated that he does not feel as though he is part of a "network."

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that his company has been closed out of opportunities because the prime used a subcontractor in its own network, but "it goes for everybody." He stated that the Consortium agencies reward companies for having relationships with other companies.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that the business has been closed out of opportunities to be a subcontractor because a prime contractor used members of its own network.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, noted that she has been closed out of opportunities to subcontract because of a prime contractor favoring other subcontractors, but she indicated that this is the result of relationships. According to Interviewee #17, the key to success is the quality of her company's work. Interviewee #17 notes that favoritism isn't necessarily a bad thing.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated that the business has been closed out of opportunities because prime contractors use preferred providers, but noted that prime contractors have every right to do so — it is the nature of the work.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that her business has been closed out of an opportunity because the prime contractor utilized subcontractor in its own network. She stated that this goes back to relationships. Interviewee #20 stated that she understands why this happens, but does not feel that it is right.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that she has absolutely been closed out of opportunities because the prime contractor used a subcontractor within its own network. She stated that this is especially the case in the construction, transportation and engineering fields. She stated that she is in the marketing field and several of the prime contractors deal only with a few Caucasian-owned firms. She said this has been the consistent case for the past three years.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she sometimes feels as though she is closed out of bid opportunities because the prime contractor used a subcontractor within its own network. She stated that sometimes teams are put together long before a proposal is put out which forecloses opportunities.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that his firm has been closed out of an opportunity to bid because the prime contractor used a subcontractor within its own network. He noted that they are consultant and they get jobs by developing relationships; if they do not get there first they are shut out.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has been closed out of an opportunity due to the "good ol' boy" network and that it is difficult to break through.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that it is not easy to break through and be able to work with other agencies. He feels that since he is new and many companies do not know him, the other agencies continue to use companies and people that they already know and with whom they are familiar.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she realizes the dictates of competition, but teams are usually formed well before an RFP issues. She could not specify a specific instance, but she knew that it has happened.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that with respect to her work with other non-Consortium public agencies, she has responded to multiple RFPs, but has not received any contracts or return phone calls.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that his firm has been closed out of opportunities because the prime contractor used a subcontractor within its own network.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she has been closed out of opportunities a couple of times because the prime contractor used a subcontractor within its own network.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that prime contractors utilize subcontractors within their own network all the time.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported that he has been closed out of an opportunity because a prime contractor used a subcontractor within its own network. He stated that when Caltrans stopped their mandatory requirements for DBE utilization, all of the prime contractors went back to using their own subcontractors. He stated that his work with L.A. County MTA dropped although L.A. County MTA used to have a good DBE and MBE Program. He stated that there used to be better opportunities when contractors were required to utilize DBEs and MBEs.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that over the years he has been closed out of opportunities because a prime contractor used a subcontractor within its own network; he stated that this has happened on more than one occasion.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that his firm has been closed out of a business opportunity because the prime contractor used a subcontractor within its own network but this happens in business. He indicated that this is the reason his firm considers networking to be part of his business growth strategy.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, stated that he has been closed out of an opportunity because the prime contractor used a subcontractor within their own network, but stated that this is a normal part of business for most firms.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that it was possible that his firm had been closed out of an opportunity because the prime contractor used a subcontractor within its own network, but he does not feel as though this has affected the success of his business as a whole.

TA #1, the President of the Latino Business Owners of America, stated that he is aware that businesses are often closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He stated that this happens everyday and he things that it is more related to a level of comfort that the prime contractors have with subcontractors that they know in their own network.

TA #2, the President of the Black Contractor's Association, stated that his members often feel closed out of an opportunity to be a subcontractor because the prime used a subcontractor within its own network. He stated that it happens all the time on public projects. TA #2 stated that he frequently hears this complaint, but could not provide any specific examples. TA #2 stated that in relation to other agencies, like the City of San Diego, there is a "good ol' boy network" that prevents his members from obtaining work. TA #2 stated that last year, the City issued $400,000 in projects and TA #2's members received only $5,200 worth of those contracts, and this year there is zero African American participation.

**Other interviewees reported no knowledge of subcontractors being closed out of opportunities because prime contractors used subcontractors within their own network. (Interviewees #11, 25, 28, 29, 32, 42, 47, 53, 57).** Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, did not know whether she had been closed out of an opportunity due to a "network" because she does not follow up with prime contractors if she loses the bid.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he does not know if he has been closed out of an opportunity. He stated he is trying to get to know people so that he can get in the door and get a contract.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, did not know whether he had been closed out of an opportunity because the prime contractor used a subcontractor within its own network.

**Some interviewees reported the existence of a "good ol' boy network" in the Consortium transportation industry. (Interviewees #1, 2, 3, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 30, 31, 34, 37, 38, 45, 46, 48, 49, 54).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that there is a "good ol' boy network" in existence. He stated that his contractors send their numbers out to people and get repeat work, but he would hope that if someone else had a better price that the prime contractor would use them instead. He stated that he knows for a fact other contractors in the field "help manipulate the environment to better themselves."

Interviewee #2, an African American structural engineer, stated that he feels that there is a "good ol' boy network" in the transportation industry because 95 percent of the firms who are offering the work are non-minorities and they get the contracts. He stated that it is difficult to pinpoint because many of these companies have been in business for years and are positioned to obtain business, but his company is new. Hence, he stated that it is difficult to tell whether they get more business because of a "good ol' boy network" or because they have simply been in business longer.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that the "good ol' boy network" exists on some level, but that it is really about offering projects to people or entities that the prime contractor has worked with. The prime contractor will often use the same people. This happens in the private sector as well. Interviewee #3 said companies will always have those companies that they want to work with and sometimes this is to the disadvantage of the DBE.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that there "could be" a "good ol' boy network" within some agencies wherein the same firms are "connected" and repeatedly selected for work.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated there is "definitely" a "good ol' boy network" in the Consortium transportation industry. He stated that he believes that the selection panels are influenced by the various agency boards.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he would guess there is a "good ol' boy" network, but he does not have evidence of that.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that there is a little bit of a "good ol' boy" network among the engineers, but it is not in the same sense as it is in "other industries where you actually use the term."

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated there is a "good ol' boy" network in the Consortium transportation industry, but had no specific incidents to report.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, said she knows there is a "good ol' boy" network in the industry. At first, Interviewee #17 was intimadated, but she is not looked down upon any more; she said she has earned her reputation.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, confirmed that there is a "good ol' boy" network in the industry, but stated that is how you become known and network. Interviewee #18 thinks the system can be used as a place to be identified as someone who does good work. She stated that there is value to having these friendships and relationships when the firms know what to expect of each other.

Interviewee #19, an MBE-certified African American male attorney, reported that he was aware of a good ol' boy" network, but did not have any specific examples as it relates to the transportation industry.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that there is a "good ol' boy" network with the Consortium transportation industry. She indicated that she cannot even get an appointment to discuss construction related marketing material with some contractors.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that there is a "good ol' boy" network in the Consortium transportation industry. She stated that there is a certain amount of work available and the "good ole' boy" network tries to make sure that the work is spread among themselves. She feels as though they concentrate on their relationships to help them get the work.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that there are maybe six contractors that get work. He stated that they have a history and a trust and there are some individuals that get work all the time.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that the "good ol' boy" network is alive and well and that it has a lot to do with relationships.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, definitely feels that there is a "good ol' boy" network. He believes that it is extremely difficult to crack through the wall and get into the network.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated there is no doubt that there is a "good ol' boy" network. He commented about the fact he is trying to crack the combination to get into this network. He hires all people: African American, Caucasian, Hispanic, Asian, it does not matter to him.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported that there is a group of firms that typically get all of the work and he noted that it is hard to crack open that door.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that the "good ol' boy" network is alive and well.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that there is a "good ol' boy network" within the Consortium transportation industry. He stated that when DBE utilization was mandatory, the prime contractors would go out and competitively seek DBE subcontractors; now that utilization is voluntary, the prime contractors use who they want on the project. He stated that the Minority Business Opportunity Center ("MBOC") is a good organization that performs outreach to encourage prime contractors to work with minority-owned businesses on major projects.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that there is definitely a "good ol' boy" network in the Consortium transportation industry. He also reported the existence of a "good ol' woman" network.

**Other interviewees reported the existence of a "good ol' boy" network throughout the transportation industry (not limited to the Consortium). (Interviewees #5, 18, 25, 33, 35, 45, 47, 55, TA #1, 2).** Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he could not specifically state that there is a "good ol' boy" network in the Consortium transportation industry, but thought that the "good ol' boy" network exists everywhere.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, confirmed that there is a "good ol' boy network" in the industry, but stated that is how you become known and network. Interviewee #18 thinks the system can be used as a place to be identified as someone who does good work. She stated that there is value to having these friendships and relationships when they know what to expect of each other.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that there is a "good ol' boy" network to some degree; she stated that all industry is like that.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that "of course" there is a "good ol' boy" network in the transportation industry.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, reported that there is a "good ol' boy" network everywhere in all industries. She stated that even when she is competitive and goes up against a non-minority company, she will receive various excuses as to why her firm did not receive the work, including that they need more experience or the other bid was just a bit lower.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she was aware of a "good ol' boy" network and they use the same people on their contracts. She stated that she knows this from her own experience dealing with them.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he did not know about a "good ol' boy" network, but identified a "buddy-buddy" system throughout the industry. He stated that private sector companies do enough to pass the rules; they will put out a solicitation to everyone, but know ahead of time which companies they are going to use. He stated that about eight or nine years ago he contacted a company about a security solicitation and told them that it sounded like from the solicitation that they intended to give the contract to the incumbent. He indicated to them that he was not planning on suing them, but he did not want to spend the money to respond to the RFP if they had a firm in mind already. He stated the firm finally told him that they planned to use the incumbent. He stated that now he is pretty good at looking at the RFP and determining whether it is geared to the incumbent.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, stated that there is a "good ol' boy" network in all construction.

TA #1, the President of the Latino Business Owners of America, stated there is a "good ol' boy" network in every agency. He stated that it is the nature of the business. Agencies already know who they want to do business with. He stated that there must be more accountability in the industry.

TA #2, the President of the Black Contractor's Association, stated that there is a "good ol' boy" network in the transportation industry. He said that a large contractor's association has a motto that states its members do business with its members. He also said a large engineering contractors association, which does a lot of Consortium jobs, has the same commitment to support each other.

**Other interviewees reported no knowledge of a "good ol' boy network" in the Consortium transportation industry. (Interviewees #4, 6, 7, 8, 9, 11, 29, 32, 36, 42, 52, 53, 57, 58).**
Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, did not have any thoughts on whether there is a "good ol' boy network" in the industry.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, did not feel that there is a "good ol' boy" network in the Consortium transportation industry.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that, to his knowledge, there is no "good ole boy" network in the Consortium transportation industry.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, does not believe that there is a "good ol' boy" network in the Consortium transportation industry.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, does not believe there is a "good ol' boy" network in the Consortium transportation industry.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she does not believe there is a "good ol' boy" network in the Consortium transportation industry and stated that the "contracts people are fair."

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, did not know whether there was a "good ol' boy" network in the Consortium transportation industry; he stated that he is just trying to build his company.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she did not know whether there was a "good ol' boy" network in the Consortium transportation industry, but stated that companies know who they like to work with and get them back when they can.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that he did not know or care whether there was a "good ol' boy" network in the Consortium transportation industry.

**Bid shopping**

**Several interviewees reported knowledge of or experience with bid shopping by prime contractors. (Interviewees #1, 2, 5, 7, 8, 11, 12, 14, 15, 16, 20, 22, 26, 28, 31, 32, 33, 37, 38, 42, 45, 46, 47, 52, 53, 54, 55, 56, TA #1, 2). Several interviewees relayed multiple instances of bid shopping having occurred.** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, identified a recent case of bid shopping on a nationwide contract and the prime contractor was requiring the subcontractor to accept a 20 percent discount on work performed; he stated that the subcontractor will agree to do this in order to keep getting work in the future. He said that it is extremely disheartening, but it happens all the time.

Interviewee #2, an African American male owned structural engineer, stated that he has experienced bid shopping within the past year. He stated that this occurs in the private sector. He said architects sometimes take proposals from engineers and shop the lowest bid to its preferred consultant. He stated that he is aware of the practice because other engineers sometimes disclose that the architects have shopped the bid to them and awarded the contract. He stated that he tested an architect by slashing his proposal by 50 percent but, even after lowering his price, Interviewee #2 did not get the job. The architect went to another engineer and negotiated the contract.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he cannot say that he has heard of instances of bid shopping, but knows that it happens all the time in the industry whether the subcontractor is a DBE or non-DBE. He stated that municipalities and private companies always take three bids in. Interviewee #5 stated that the prime contractors generally call him back and tell him what the lowest bid is, and ask if he wants to beat the price and he generally says "no." Hence, he stated, price shopping happens all the time.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that bid shopping is "very prevalent" in the industry, whether or not the subcontractor is a DBE. In fact, interviewee #7 stated that the morning of this interview, he lost a bid on a project to someone else after the contractor shopped the bid.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he has heard of bid shopping. He has suspected that it has happened on several occasions in the public sector, but none of those instances was with the Consortium. He stated that there is a law that on certain contracts the prime contractors must list the subcontractor's bid to prevent "bid peddling," but his contracts are too small to meet the threshold for this law.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she has experienced bid shopping in the private sector and people call her all the time to get pricing. She stated that there are strict rules, and she is selected because of low price.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has been "on the other side" of bid shopping. He stated that he receives calls for bids and he tells his people not to spend a lot of time putting together a proposal, but rather just give them a number.

Intervieee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has heard of "bid shopping." He stated that another challenge is when the pricing portion of the bid requires the use of a formula that has very little do with the actual project. For example, he stated that a proposal for a marketing plan should be evaluated based on talent and price. However, the more talented the individuals, the more expensive the proposal. He stated that this requires the talented company to underbid the proposal. He stated that sometimes this causes his company to lose a proposal to a company who is less expensive, but has "no idea what they are doing." He stated that these proposals should be evaluated by an experienced marketing planner with transportation experience as opposed to evaluation based on construction pricing.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has experienced and heard of bid shopping. Companies have asked for quotes and his pricing and then used that information to push preferred contractors' pricing down. Interviewee #15 has had subcontractors call him and say, "How is my number?"

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he has heard of and experienced bid shopping. Interviewee #16 notes that these games get played all the time.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he has experienced bid shopping; this is why he feels he did not get some contracts. He

believes that there have been instances where the prime contractor has taken his prices and then found someone to submit a lower bid, despite the quality of the project.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, was aware of bid shopping. She stated that it is prevalent in printing and is a standard part of the contract.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that within the past two years he has had contractors ask for his price, which they will then pass on to their own electrical company so that it knows it must come in under that number. He stated that other times contractors will request a price three days before a bid is due in order to verify the price of their chosen subcontractor. He stated that he no longer provides price quotes to these companies. He stated that his bid is protected only when the prime contractor is required to have 20 percent minority participation; then they will protect his quote.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported that he was aware of bid shopping.

TA #1, the President of the Latino Business Owners of America, stated that he has heard of bid shopping recently. He stated that generally prime contractors make subcontractors lower their prices until they finally bow out.

TA #2, the President of the Black Contractor's Association, stated that he has heard of bid shopping. He stated that his members often suspect that the prime contractor provided their quote to another subcontractor to receive a lower quote. As a result, he stated that many subcontractors (whether DBE or non-DBE) call their numbers in five minutes before the bid time because they do not want their numbers shopped. He stated that if they trusted the prime they would send their numbers in a week or a day early. TA #2 could not provide the names of any specific projects in which bid shopping may have occurred.

**Other interviewees reported no knowledge of or experience with bid shopping by prime contractors. (Interviewees #3, 4, 6, 9, 10, 17, 18, 19, 21, 25, 27, 29, 30, 34, 35, 36, 47, 49, 57, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he had not heard of any bid shopping.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has not directly experienced bid shopping, but does not know whether it has happened to others.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has never heard of any bid shopping.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he has not experienced bid shopping although sometimes their business will be told that their prices are too high and that is why the prime contractor stopped calling them.

**Bid manipulation/different bid criteria**

**Several interviewees reported having experienced or heard of bid manipulation. (Interviewees #1, 2, 3, 4, 7, 8, 9, 13, 14, 15, 16, 20, 22, 26, 28, 31, 37, 45, 46, 47, 48, 53, 54, 55, TA #1, 2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, stated that he has "absolutely" seen bid manipulation happen. He referenced the example of someone with the prime contractor's firm bidding the project under a different name to ensure that one of the parties will win the contract.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has not heard of or experienced any bid-manipulation directly, but he knows that it clearly happens in the private sector. He stated that he knows for a fact that an architect will look at the low bid price and approach his preferred engineer and say "lower your price to this one and I'll give you the job." He stated that he has not seen this in the public sector.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that there is a lot of speculation about bid manipulation in the public sector. He could not give any examples, but heard of situations as recently as 2000 in which a prime contractor designated a particular DBE for bid and changed the DBE afterward. Interviewee #3 stated that a prime can always come up with a reason not to use a DBE. For instance, the prime might say that a DBE did not have enough manpower. Interviewee #3 stated that he has also heard of prime contractors satisfying the requirement to use a DBE at the bid stage and then the DBE would not get the work.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he has not heard of bid-manipulation, but was generally aware that general contractors often sent notices out to subcontractors asking for a price quote 24 hours before the bid was due. He stated that this last occurred four 4 months ago, on a private sector project involving electrical work for a school district.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he has perceived bid manipulation, but it is very difficult to prove; this experience was not with the Consortium. Interviewee #8 provided the example of a State of California RFP that indicated that qualifications came first, and price came second; he did not think this was true.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that bid manipulation "could happen," but he does not have any proof. He stated that once in a while there will be an RFP where the price is supposed to be maintained in a sealed envelope until after the selection of the firm, but sometimes it will be "leaked out of ignorance" by the project manager; they will say "we opened it up and saw how low the other guys were so we picked them." He noted, however, that this has not happened with a Consortium agency.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has had the experience where non-Consortium agencies have found something that they liked in a proposal they received, and have then issued an addendum to the RFP based on what they saw and what they liked; he stated that this is not fair. Interviewee #13 stated that he has also been told by agencies to team up with another contractor to avoid competition.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that bid-manipulation is a "touchy situation," but it "definitely" exists to some extent.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that he has heard of and experienced bid manipulation. Interviewee #16 noted that these types of things happen all the time.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of bid manipulation, but has not experienced it. She stated that when teams do not win a project they will complain of bid manipulation.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that when large companies shop around for bids, even if a minority-owned company has the lowest bid, if they want to use their own people they will use the term "lowest responsible bidder," which allows them to award the contract to the firm that has not submitted the lowest bid.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, reported that he had experienced bid manipulation. He relayed one instance in which he bid a job at $13 million which was as low as he could go. The agency then informed him that they were going to award the contract to another bidder at $11 million. Interviewee #47 stated that he went back to his bid, and he removed all profit, overhead, and G&A and got his bid down to the pure cost which was around $11 million — he stated that he could not figure out how someone was able to bid the contract at $11 million. He followed up with a friend who was a friend of someone in the agency; this agency person informed him unofficially that the agency planned to amend the award to get it back up to $12 or $13 million.

TA #1, the President of the Latino Business Owners of America, stated that bid-manipulation happens everyday. He stated that prime contractors request price quotes from DBEs for bidding purposes, but they do not provide the DBEs with enough time to respond.

TA #2, the President of the Black Contractor's Association, stated that he has heard of instances of bid-manipulation, primarily by calling DBE subcontractors to request a price quote the day before a bid is due so that the prime can say that it made a good-faith effort to use a DBE. TA #2 stated that this is commonplace and he hears about it periodically. TA #2 stated that he has in the past heard of occasions in which a prime contractor represents that it is going to use a DBE, but does not in fact use the DBE.

**Several interviewees had never heard of or experienced bid manipulation. (Interviewee #5, 6, 10, 11, 13, 17, 18, 19, 21, 25, 27, 29, 30, 32, 33, 34, 35, 36, 38, 42, 49, 52, 56, 57, 58).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has never heard of or experienced bid-manipulation because in San Diego most agencies follow-up. Interviewee #4 stated that sometimes he receives an email or call saying that his firm has been listed as someone who was contacted and the agency asks him whether it is true, and whether he submitted a bid. He stated that he is not sure whether the agencies follow-up every time, but once in a while he does receive follow-up and knows that someone is checking. Interviewee #4 also explained that when a prime contractor submits a proposal for a project the prime contractor is supposed to have letters of commitment from that subcontractor and

if the prime contractor wins the contract it is not easy to change the subcontractor. The prime must obtain prior approval first from the agency and provide reasons why it is changing the subcontractor.

**DBE fronts**

**Several interviewees reported some knowledge of alleged "DBE fronts." (Interviewees #2, 3, 4, 9, 10, 13, 16, 19, 20, 22, 25, 27, 28, 30, 31, 33, 34, 36, 37, 38, 42, 45, 46, 48, 49, 54, 55, 56, TA #2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he hears about DBE "fronts" "all the time." Often times, he stated that the DBE is certified because the wife of the person who operates the business is listed as the owner. He stated that he has heard of DBE "fronts" as recently as a couple of years ago, but could not recall any specific projects.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that the downside of the DBE Program is that there are often businesses certified as woman-owned but women have no involvement in the actual operations. Interviewee #3 stated that he is aware of a drilling subcontractor in the environmental business commonly used and certified as a woman-owned business, but the female owner did know much about the area and was not a geologist. He stated "it was a scam." This company obtained projects through the Consortium and the Consortium qualified them. Interviewee #3 stated that when he was employed at his previous firm, between 1990 and 1995, he thought that half to two-thirds of the subcontractors held their certification improperly. It was not always under the circumstances of a woman-named the proprietor.

Interviewee #3 also described other DBE "fronts" including an analytical laboratory that had a woman-owned business designation, and "sham" drillers on assessment projects. He recalled that the DBEs he felt were shams did work for the Consortium, but could not recall any projects that they worked on.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has heard of DBE fronts. He was aware about 10 years ago of a business certified as a woman-owned business, but the wife who was owner was actually never involved in the business and the husband was running the show behind the scenes. Interviewee #4 stated that he is not aware whether the company obtained work through the Consortium, and could not recall any particular projects that they worked on.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, has heard of DBE fronts but has not "dealt with it much recently." He stated that sometimes this happens with a WBE firm where the wife is supposedly in charge but that is rare. He could not think of any MBE fronts.

Interviewee #10, a DBE-certified African American female-owned accounting firm, had heard about DBE fronts in the news. She stated that the SBA newsletter reported an incident several months ago about a firm that was not a minority at all. She stated that it is her understanding from the SBA newsletter that the SBA now has to go and investigate firms to make sure that they are in fact qualified.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has heard of DBE fronts and provided the example of a husband and wife team where the wife is the listed president, but the husband is really in charge of the company.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, has heard of DBE "fronts" posing as minority companies to get various contracts. Interviewee #16 stated that this often happens with suppliers and vendors where it is easier to write contracts around various industry standards and requirements for minority business use.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she had heard of DBE "fronts," but it was her recollection that this occurred more in the 1980s and 1990s when the DBE Program had just begun.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he had heard of DBE fronts a long time ago, but he did not have any first-hand experience with this.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, had heard of instances of business fronts where the minority or DBE does not truly own the company.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has heard of DBE fronts, but he's not sure about them.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has heard of DBE fronts. He stated that the L.A. County MTA comes to your house and looks at what you have and they want to see that you are disadvantaged; he noted that he had experienced a DBE front though. There was an instance in which he observed a DBE front where the wife of the person running the business was listed as its primary owner. This was in order for their business to receive certification as a female-owned entity. He said the husband has been a bricklayer his whole life and his wife was able to get certification and they now qualify for projects that he could not get because they are competing for the same types of funds.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of DBE fronts. She provided the example of the wife being a nurse or a real estate agent and they open an engineering firm and the husband is an engineer; she stated that they do this to try to get business as a female/minority-owned firm.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, reported that he has heard of DBE "fronts." He stated that this is usually in the form of a female-owned business that is actually run by the woman's husband or someone else.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, reported that she had heard of DBE "fronts" about three or four years ago; she heard that men would list females or minorities, like a cousin, as the business owner in order to obtain work.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he was aware of a few DBE fronts in particular.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of Caucasian women posing as a business owner in order to qualify for DBE certification.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, reported having worked at a firm in the past that he believes operated as a DBE but was a "front." He stated that the firm reportedly had a female owner, but she was the owner in name only; her husband was actually the managing owner of the organization.

TA #2, the President of the Black Contractor's Association, stated that he has heard of DBE "fronts" but could not say that he knew of a DBE front. He stated that he has sometimes seen teaming between a non-DBE and DBE firm to obtain projects.

**Some interviewees reported that they had never heard of "DBE fronts." (Interviewees #1, 5, 6, 7, 8, 12, 14, 15, 17, 18, 21, 26, 29, 32, 35, 47, 52, 53, 57, 58, TA #1).**

**False DBE reporting**

**Some interviewees reported experience with or knowledge of false DBE reporting. (Interviewees #3, 10, 19, 20, 22, 27, 28, 31, 35, 36, 37, 38, 45, 48, 49, 55, TA #1).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he had not heard of false DBE reporting but also relayed the following example: he stated that he has heard of situations as recently as 2000 in which a prime contractor designated a particular DBE for bid and changed the DBE afterward. Interviewee #3 stated that a prime can always come up with a reason not to use a DBE. For instance, the prime might say that a DBE did not have enough manpower. Interviewee #3 stated that he has also heard of prime contractors satisfying the requirement to use a DBE at the bid stage and then the DBE would not get the work.

Interviewee #10, a DBE-certified African American female-owned accounting firm, had heard of false DBE reporting. Interviewee #10 stated that other non-Consortium agencies have a team to ensure that prime contractors properly make a good faith effort to utilize DBE subcontractors. She stated that she has received a phone call from the team to ensure that she was a DBE and was contacted by the prime contractor.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she has heard of false DBE reporting. She noted that it had been a while, but she had heard of a company receiving 10 percent of the work and having it reported that they received 25 percent.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that in the 1990s their firm was a DBE on a rail project and the prime contractor inflated his firm's hours for reporting purposes. He stated on another occasion, a prime contractor used their name without their permission to win work; they only found out about it by accident after receiving some mail.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, was aware of instances where prime contractors have falsely reported DBE participation in contracts.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, stated that on some non-Consortium projects she has submitted a bid, been listed as a subcontractor, but then does not receive any work.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported that a lot of contractors will bring on a DBE or MBE to buy something and then pay them 8 percent above the cost for their effort. For example, if the prime contractor needs the DBE to do 15 percent of the work and that is $250,000.00, the prime contractor will have the DBE purchase the materials from a designated supplier and will pay the bill and pay the DBE 8 percent for their effort; the DBE, however, is never physically on the job. He stated that passing work to buy the materials to a minority subcontractor in order to meet a goal is not the way the DBE Program was intended.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of false DBE reporting as it relates to Caucasian female-owned firms being utilized on projects. He also reported an instance of a large company deciding not to use DBEs after they had included DBEs on their proposal. He stated that the company came up with a number of "thin-veiled" excuses to get out of using the DBEs.

TA #1, the President of the Latino Business Owners of America, stated that he has heard of false DBE reporting, but could not recall any specific details.

**Most interviewees reported no knowledge of false DBE reporting. (Interviewees #2, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 21, 25, 26, 29, 30, 32, 34, 42, 46, 47, 52, 53, 54, 56, 57, 58, TA #2).** Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, had never heard of or experienced false DBE reporting or prime contractors falsifying their good faith efforts to utilize DBEs. He stated "I'm not saying it does not happen but I haven't heard of it."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he has not experienced or heard of false DBE reporting, but he is "not in a position to know."

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, was not sure if he had heard of false DBE reporting.

**A few interviewees reported that they had no direct knowledge of false DBE reporting, but were "sure" that it has happened. (Interviewee #1, 4, 7, 33).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, had never heard of false DBE reporting or of prime contractors falsifying their good faith efforts to utilize DBEs although he is "sure that it happens."

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has never heard of any false DBE reporting, but he is sure that it has probably happened.

Interviewee #7, a non-DBE Caucasian male-owner of a solar hydrogen fuel cell sales and installation company in the San Diego area, stated that he does not specifically know of any false DBE reporting, however, he is sure that it happens.

**Good faith efforts**

**Many interviewees reported perceptions of instances where prime contractors did not use genuine good faith efforts to locate qualified and available DBE subcontractors. (Interviewees #3, 4, 7, 8, 11, 12, 13, 16, 18, 20, 21, 22, 26, 27, 28, 30, 31, 33, 37, 38, 45, 46, 47, 48, 49, 54, 55, TA #1, 2).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, recalled situations in 2000 where it was rumored that a prime falsified its "good faith efforts" to utilize DBEs. He stated that the prime simply explained that it could not find a DBE.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he does not think that prime contractors really make an effort to falsify their "good faith efforts" to utilize DBEs. His impression is that most prime contractors are just going through the motions when it comes to good faith efforts. They have to do it so they advertise and send faxes or emails or letters. Interviewee #4 stated that he does not think that they are doing it in an earnest way because often he receives a RFP with very little time on the clock left, and there is no way his firm can put together a proposal in two days or so. For example, recently he received a RFP on a fairly large project for a public agency and the prime wanted a proposal in two days; his firm could not put it together.

Interviewee #7 stated that he is generally aware that prime contractors falsify their "good faith efforts" to utilize DBEs. This often occurs when the prime contractors wait until twenty-four hours before a bid is due to notify DBEs of the bid.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he has heard of prime contractors falsifying their good faith efforts to utilize DBEs, but not on Consortium projects.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that people do falsify their good faith efforts and they are just trying to satisfy the requisite criteria.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he did not have evidence to show that a prime contractor had ever falsified his good faith efforts. But, he stated that on one contract he did not think the prime contractor who won had met the DBE goal or satisfied the good faith efforts.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he receives a lot of inquiries from prime contractors doing business with the City of Los Angeles asking whether he is interested in participating on a project; he stated that he always responds that they are interested, but he "never" gets a response from the prime contractor.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, thinks that good faith efforts are "the biggest joke out there." Interviewee #16 receives faxes all the time from companies seeking to certify that they have sought out minority businesses as subcontractors and meeting good faith effort standards. A lot of times Interviewee #16 receives these faxes for services totally unrelated to his business or sometimes a day before a bid is due — the company cannot even put a bid together in that short amount of time. "These companies are trying to bypass the system and use a loophole."

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, reported that she has heard recently about prime contractors falsifying their good faith efforts, and that this practice is ongoing.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that prime contractors will go through the effort, but already have a firm in mind. He stated that they have been helped and hurt by this, and he believes that it is the way the system works.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he feels that this has happened to him where he's received information about an opportunity, but did not hear back primarily because the prime contractor was reaching out to DBEs only because of the good faith effort requirement, which wasn't enough to actually get the contract awarded to him. It was simply an attempt to get his information to be included in a report as a "good faith effort."

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, said that often prime contractors will send him information to bid on projects for plumbing and drainage, but he is a masonry contractor. He stated that the prime contractors are just going through the step of showing a so-called good faith effort, but they are not really trying to get a subcontractor.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she perceives prime contractors do falsify their good faith efforts. She stated that she came close to fighting a company's claim of good faith efforts a couple of times, but she did not want to spend the time trying to prove it. She wanted instead to put forth her effort at finding new business.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has heard of contractors falsifying their good faith efforts, but that it is just the nature of the business and it is not going to change during his lifetime.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, indicated that he believes all prime contractors falsify their "good faith efforts" to utilize DBEs.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has received telephone calls and faxes asking him to be a subcontractor; he sends in information, but never hears back from them. He stated that within the past six to eight months, he has provided information to four companies, but has not heard back from any of them. He stated these companies may then tell the government they solicited DBEs but could not find anyone. He also indicated that prime contractors can have someone within their own company fill out the paperwork to become a DBE, and then they can award the jobs to them.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that he has heard of contractors falsifying their good faith efforts to utilize DBEs; he believes that this was reported, but nothing was done to rectify the situation.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, reported that he has heard all the time about prime contractors falsifying their good faith efforts to utilize DBEs.

TA #1, the President of the Latino Business Owners of America, stated he believes that prime contractors do falsify their "good faith efforts" to utilize DBEs. He stated that they put in a little effort and simply say there was no response and then use a non-DBE. He stated that there is no way for the agency to go back and find out if the prime contractor actually requested any price quotes from DBEs. He stated that there is no monitoring of the prime contractor's "good faith efforts" and whatever the prime contractor reports is accepted by the agency. He stated that he last heard of this occurring this year.

TA #2, the President of the Black Contractor's Association, stated that prime contractors often falsify their "good faith efforts" to utilize DBEs by providing only a 24 hour notice of an invitation to bid so that they can have a file letter indicating that they made a good-faith effort to use a DBE. Subcontractors then have very little time, if any, to submit the quote. TA #2 also stated that he has heard members say that they have seen their names on bids, but were not used or the member was substituted.

**Other interviewees reported that they had never heard of or experienced a prime contractor falsifying its good faith efforts. (Interviewee #2, 6, 14, 15, 17, 19, 25, 29, 32, 34, 36, 42, 52, 53, 56, 57).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has not heard of or experienced prime contractors falsifying their "good faith efforts" to utilize DBEs.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has never heard of any prime contractors falsifying their "good faith efforts" to utilize DBEs.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that he has not heard of a prime contractor falsifying their good faith efforts to utilize DBEs. Interviewee #14 stated however that no one audits contracts to determine what was proposed as far as DBE participation (and, presumably actual participation).

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has been approached by companies regarding "good faith efforts." Interviewee #17 gets a lot of requests that she thinks are for the purpose of making good faith efforts because the company is listed in certain directories as being a contractor rather than a professional services firm.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she could not say for sure whether she was aware of prime contractors falsifying their good faith efforts, but noted that prime contractors use the firms that they want to use.

**Recommendations related to good faith efforts**

**Some interviewees recommended the Consortium more closely monitor DBE utilization and good faith efforts. (Interviewees #15, 16, 22, 24, 26, 36, 37, 40, 45).** Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that more stringently enforced good faith efforts rules would help with compliance. He felt this is largely non-existent.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, thinks that good faith efforts should only be considered when the efforts are made in the relevant service industry and with enough time for bids to actually be completed. Otherwise, good faith efforts are completely meaningless.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that the Consortium should be more consistent in its visits to work sites.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that the Consortium needs to monitor the amount of the contract that is supposed to go to a DBE and the percentage that actually does. She stated that prime contractors need to be held accountable and show that monies set aside for DBEs are actually used for DBEs. She stated the Consortium should also monitor prime contractors' use of "best efforts."

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, stated that the Consortium should hold prime contractors more accountable for using DBEs on their contracts thus preventing them from using DBEs to meet bid requirements and then not using them when they are awarded the contract.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that the Consortium should perform an audit to make sure DBEs are getting the work that they are supposed to get.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, recommended stated that the Consortium should monitor DBE utilization to ensure that the process is fair and business deals are not made because of relationships. He stated that the Consortium should not make small businesses and firms always compromise to get a piece of the pie. He stated that there must be some kind of oversight to make sure the process is what it is intended to be.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that the Consortium should have a system in place to monitor the worksites and the business relationship between the prime contractor and the DBE. He stated that the DBEs should not be doing 25 percent of the work when the contract only reflects them doing 10 percent of the work. He stated that in order to avoid disputes later, all levels should meet at the beginning of the project and come to an understanding so that they are all on the same page when the project begins. He stated that the agency should stay involved in each project and there should be a mediator. This is so that no one will suffer, especially the DBE; he stated that the DBE cannot roll through problems.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, recommended that the Consortium monitor prime contractors and make sure that

they are utilizing DBEs when required. She stated that the Consortium should take into consideration that DBEs are DBEs for a reason and they need to be given an opportunity to showcase their abilities to give them the ability to graduate from their DBE status. "They need to make prime contractors use the DBEs. DBEs should be referred to the prime contractors that are shortlisted for projects. [DBEs] need to be informed more than three days before a bid is due. The only letters they receive are about renewing their certifications, but nothing more than just that. . . There is no way to ensure you get the work after you are solicited. You wonder if [they] wanted to use you in the first place or did they have someone else in mind from the beginning." She stated that firms are not being compliant.

## B. SDCRAA anecdotes regarding perceived general barriers to participation in the public and private sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2009 SDRCAA study.

### Good ol' boy network

#### 1. Obstacle to pursuing or obtaining business

**Several interviewees reported that a substantial barrier to obtaining work in the public and private sectors is the preexisting relationships between agencies and particular prime contractors or between prime contractors and particular subcontractors.** Interviewee #SD20, representing an Asian American male-owned firm, reported that the good ol' boy network still affects his business, primarily in the private sector: "In the private sector, [issues related to a good ol' boy network are] still happening!" He went on to say that those problems do not exist to the same degree in the public sector because the work is more varied, which generates opportunities for different firms.

Interviewee #SD16, representing an African American male-owned firm, indicated that the good ol' boy network causes problems for his firm: "The good ol' boys network still exists and it is wrong."

Interviewee #SD34, representing a Caucasian male-owned firm, indicated that many potential clients have existing relationships with competing firms in his industry and that it is difficult to convince them to make a change, even when his firm can offer better prices.

When asked if her firm has ever experienced exclusion from the good ol' boy network, Interviewee #SD43, representing a Hispanic male-owned firm, stated, "Definitely." She explained, "When we send bids … we'll see the same names coming up over and over again [as the winning prime and subcontractors]." She went on to say that her firm as attempted to get more subcontracting work but has not been successful because large prime contractors tend to only use firms with whom they have worked in the past: "I think most of the big construction companies have their established subs that they go to …. They usually go with the [subcontractors] they already know."

SDTA #1, representing a local chamber of commerce, indicated that networks of large contractors certainly present a challenge to all small firms in San Diego, including those that are minority- and female-owned.

SDTA #2, representing an Hispanic American trade organization, reported that public agencies favor certain contractors over others: "[Public agencies] have their favorites in contracting." He went on to say that the good ol' boy network in San Diego motivated the founding of his organization: "I have been questioned by other majority-serving chambers as to why we don't join [them]. My answer to them is simply. 'We created our own business network because we couldn't play in yours.'"

SDTA #5, representing a government advisory commission on minority issues, indicated that the good ol' boy network has been detrimental to small firms in San Diego, including minority- and female-owned ones: "I have seen how the good ol' boy network is an issue in doing business in San Diego and how the community can kill off small businesses through various means."

**A number of interviewees reported that networking is particularly difficult for small firms.** Interviewee #SD20, representing an Asian American male-owned firm, said that the biggest problem for small firms is their inability to network with local agencies and prime contractors. He stressed that the more local connections a small firm has, the better off it will be.

Interviewee #SD14, representing a Hispanic American male-owned firm, asserted that in order to establish their names, less established firms have to work with a number of large, better established firms, which can be difficult. He remarked, "That's why I didn't change the name of [my] company [after buying it from his uncle], because it was established when I took it over."

SDTA #6, representing an Asian American trade organization, said that many of the organization's members do not know how to market their businesses effectively. She reported that some of the organization's members quit after one or two marketing events, because they do not understand that the crux of marketing is developing relationships.

Interviewee #SD5, representing an African American male-owned firm, said that marketing is particularly difficult for small firms, because trade associations that are supposed to help them market do not do a good job of it. He indicated that those organizations do not address the marketing needs of small firms: "They are not catering to the small businesses that need help."

Interviewee #SD17, representing a Caucasian female-owned firm, indicated that advertising effectively is difficult for her firm: "Knowing when and where to advertise is difficult. It has been a hit-and-miss experiment for us."

Interviewee #SD30, representing an African American male-owned firm, explained that networking is crucial to being successful in the contracting industry. He said that finding out about work is relatively easy, but "the obstacle is getting [the work]," and that is when having a well-established network of clients and contractors helps. Regarding the importance of having relationships with other contractors, he said, "A lot of general contractors go with [subcontractors] who they're familiar with, who they know, who they've done business with before. They do … good faith efforts, but they still fall right back into lock step and go with [subcontractors] they know …" Interviewee #SD30 indicated that there are a few prime contractors with whom he has been able to build relationships.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that marketing and learning about work can be expensive and is a barrier to success for new firms: "It's just difficult getting your name out there. It seems like every time you want to put your name out there, it costs some kind of money to do it."

**Some interviewees reported having issues with the San Diego chapter of the AGC.** Interviewee #SD2, representing a Caucasian female-owned firm, reported being threatened at a trade meeting because she previously criticized the AGC. She said that a man who was also attending the meeting took her aside and said, "What are you saying about the AGC? You better be careful!" Interviewee #SD2 said that she did not report the incident, because she was afraid that if she did, members of the AGC would not do business with her.

Related to those comments, Interviewee #SD3, representing a Caucasian male-owned firm, reported that he had previously been a member of the AGC, but left the organization because he was uncomfortable with how it conducted business. Interviewee #SD# said that he was later blackballed by the AGC. He said that a supplier recently called him and told him that they would not sell him materials, and Interviewee #SD3 attributed that refusal to his icy relationship with the AGC.

Interviewee #SD47, representing an African American female-owned firm, stated that colleagues have advised her to "stay away from the AGC — they don't mean you any good … When you pursue your insurance or bonding, look at the AGC directory and make sure [the insurance broker orsurety company] is not affiliated [ with the AGC]. Interviewee #SD47 indicated that she has followed that advice since the inception her firm.

SDTA #11, representing a veterans trade organization, indicated that a network of large contracting companies in the San Diego area makes it difficult for smaller firms to compete. He said that the AGC in particular perpetuates the problems of a good ol' boy network: "[The AGC] are the big boys, and they don't want anyone [else] in the dance."

**A few interviewees reported that problems with good ol' boy networks have been addressed, either by agencies or by the current market.** Interviewee #SD14, representing a Hispanic American male-owned firm, said there used to be a good ol' boys network that made it difficult for small firms and MBE/WBE firms to compete for contracts, particularly in the private sector. However, because of the slow economy, agencies and prime contractors no longer rely exclusively on those contractors and instead try to find the lowest bid, some of which happen to come from minority- and female-owned firms.

Interviewee #SD33, representing a Hispanic American male-owned firm, stated, "There's going to be [a good ol' boy network] anywhere. He indicated that his firm has experienced exclusion from the good ol' boy network, but "not so much in municipal work." He said that his firm has encountered that exclusion primarily in the private sector.

SDTA #10, representing a supplier trade organization, stated that some of the organization's members have experienced exclusion from the good ol' boy network, but that his organization works to help mitigate its impacts.

**Some MBE/WBE firms reported being part of the good ol' boy network.** Interviewee #SD28, representing a Caucasian female-owned firm, said that the good ol' boy network exists, and a number of small firms in San Diego are excluded from it. However, she reported that because of her existing relationships in the industry, her firm is included in the network. She added, "We've broken a lot of barriers, because [firms in the good ol' boy network] found that we could do the work."

Interviewee #SD32, representing an African American male-owned firm, stated that not only is there a good ol' boy network in San Diego but that his firm is part of the network: "We're one of the good ol' boys." He said that his firm is part of the network because it has marketed itself effectively and built a reputation for performing well.

Interviewee #SD18, representing a Caucasian female-owned firm, indicated that the good ol' boy network exists in San Diego, but that her firm is well accepted within the network, because it began as a Caucasian male-owned business and continues to be thought of as such.

**A few interviewees said that they were unaware of the existence of a good ol' boy network.** SDTA #7, representing a construction trade organization, indicated that there is no good ol' boy network in San Diego. He said, "You got to work your way in — there is some of that. But a lot of it is design, bid, build … . There is no 'Casper is a demo contractor and he's 10 percent high, but we really like him because we had a drink with him the other night so I think we'll let him do [the work].'"

Similarly, Interviewee #SD22, representing a Caucasian male-owned firm, indicated that he had no direct knowledge of the existence of a good ol' boy network in the San Diego area but he wondered aloud how a competing firm recently won a contract with the Airport without Interviewee #SD22's firm even hearing about the opportunity. He said, "I wonder why the Airport didn't ask us directly — we've been in the business for so many years."

Interviewee #SD21, representing a Caucasian male-owned firm, reported that he had no knowledge of the existence of a good ol' boy network in the San Diego area.

Interviewee #SD19, representing a Caucasian male-owned firm, indicated that there used to be a good ol' boy network in San Diego that made it difficult for small firms to compete for projects, but that those problems have dissipated: "When I first started in this industry there was a lot of good ol' boy networking going on, but even now this is still not a woman's firm but I feel like most firms have at least one woman and are getting more transparent [in their subcontracting procedures]."

### 2. DBE prime contractors prefer to use DBE subcontractors

**Several interviewees explained that MBE/WBE prime contractors are more likely to use other MBE/WBE firms as subcontractors.** Interviewee #SD20, representing an Asian American male-owned firm, said that his firm actively tries to use other minority- and female-owned firms when selecting subcontractors: "We strive to give opportunities to MBE and WBE firms, because we were like them before." He made clear though that DBE status is never the sole consideration.

Interviewee #SD5, representing an African American male-owned firm, indicated that he tends to use the same subcontractors across projects: "I know people. I have been in the construction industry since the 1980s." He went on to report that the majority of his subcontractors are African American- and Hispanic American-owned firms. Similarly, Interviewee #SD16, representing an African American male-owned firm, reported that most of the subcontractors that his firm uses are Hispanic American-owned firms.

### 3. Natural and unavoidable

**Some interviewees indicated that agencies or prime contractors using firms with whom they have preexisting relationships is natural and unavoidable.** SDTA #1, representing a local chamber of commerce, reported that it is natural that local public agencies are more comfortable using large, well-established contractors.

Interviewee #SD30, representing an African American male-owned firm, said that a good ol' boy network exists in San Diego, but he indicated that it is natural and understandable and that it is not "exclusive to one race." He said, "I think you do need to be a part of it [to be successful]."

Similarly, SDTA #9, representing a public works trade organization, said that pre-existing relationships between prime contractors and subcontractors is the most important factor in subcontractors getting work: "Some primes might have sub opportunities and [our organization] will then post the opportunity or work to get the appropriate team together. But putting together a team is mostly about relationships and trust." He went on to say that it is difficult for small firms to develop those relationships because of their size: "Small businesses are at a disadvantage of developing relationships because of their size. They don't have the staff to allocate for business development and relationship development."

#### Bid shopping and manipulation

**Many interviewees reported that bid shopping is a barrier to be being successful in the public and private sectors.** Interviewee #SD5, representing an African American male-owned firm, said that a problem with the bidding system is that there are a number of prime contractors that do not want certain subcontractors to win contracts. He explained that the prime contractor will disclose subcontractor's bids to other subcontractors that they want to use. He said, "[There are times when] I know I have a low bid and can do the job. But what the companies do is shop the bid."

Interviewee #SD2, representing a Caucasian female-owned firm, said that she is staunch about giving her lowest bid at the time of bid, but prime contractors still try to shop it. She reported that her firm has lost some good jobs "because [we] won't play the game." She indicated that bid shopping occurs most often when listing laws are not being enforced: "When there are no laws or they are not enforced, that's when you have a problem … . When the primes have one or two days to list, that's when they bid shop."

Interviewee #SD4, representing a Caucasian male-owned firm, reported that subcontractors submit their bids quite late, because they are afraid that the prime contractor will shop their bid. Similarly, he said that suppliers submit their quotes late to subcontractors, because they are afraid that the subcontractor will shop their quote. Interviewee #SD4 noted that his firm never shops bids, because they do not want to develop a bad reputation among subcontractors.

Interviewee #SD14, representing a Hispanic American male-owned firm, reported that bid shopping occurs "all the time," particularly in the private sector. He said that he often receives solicitations for bids from prime contractors that have no intention of using him. Instead, they shop his bid around until they can find a contractor that they want to use that will match his price. He explained, "If you bid a private sector job … they'll call up somebody else and chop your [bid] up."

Interviewee #SD20, representing an Asian American male-owned firm, reported that bid shopping occurs most often in the private sector, because it is much more price driven than the public sector. He said that because the public sector is more focused on the qualifications of contractors, bid shopping is less common. Consistent with those comments, Interviewee #SD6, representing a Caucasian male-owned firm, said that prime contractors are not required to list their bids in the private sector and as a result prime contractors shop bids more often.

Interviewee #SD17, representing a Caucasian female-owned firm, reported that it is very important for a firm to offer competitive prices in order to be successful: "We have been locked out [of bid processes] because we were not the lowest bid, but we were the lowest hourly rate." She went on to say that, because of the pressure for firms to be low bidder, bid shopping occasionally takes place: "Certain companies are sneaky and they will call pretending to be inquiring about prices for a job. That doesn't happen often, but it does happen." She went to say that as a result of bid shopping, her firm generally does not share bid information with other firms: "We keep our mouth closed. We don't share bid information because we know people like [a specific firm in the area] shop bids."

Interviewee #SD28, representing a Caucasian female-owned firm, reported that she knows that prime contractors have faxed her firm's bids to other firms. She explained that one prime contractor mistakenly faxed one of her firm's bids back to her, because he thought he was sending it to another firm. However, she said that she does not think that bid shopping occurs all that often.

Interviewee #SD30, representing an African American male-owned firm, indicated that it is well known in the industry that bid shopping takes place. He said that subcontractors do their best to prevent prime contractors from shopping their bids: "The training I had is that when you submit your estimate or your proposal you want to submit it … shortly before the deadline, even if you [have] it ready a day or two before the deadline."

Interviewee #SD31, representing a Caucasian male-owned firm, stated that bid shopping occurs "no matter who you are — the big boys will do it to each other!" However, he went on to explain the likelihood of bid shopping decreases as a firm becomes bigger and builds its reputation.

Interviewee #SD32, representing an African American male-owned firm, reported that his firm often shops bids to find the best deal: "We shop everything." Interviewee #32 explained that although his firm shops bids, it does not manipulate them.

Interviewee #SD33, representing a Hispanic American male-owned firm, indicated that bid shopping occurs regularly, and that his firm does not submit bids to certain firms because they shop bids: "[We do] not bid to certain contractors because they use our numbers. Some generals get [our] numbers and shop around or use the numbers themselves."

Interviewee #SD44, representing a Hispanic male-owned firm, indicated that he is aware of bid manipulation taking place to some degree. He provided an example of certain public sector contracts requiring supplies made from particular, large manufacturers (e.g., Ingersoll Rand), forcing prime contractors to buy products from those firms. Interviewee #SD44 said that he did not know why certain contracts are specified in that way.

Interviewee #SD45, representing a Caucasian male-owned firm, said his firm has frequently been victim to bid shopping: "Many times they have solicited our bid only to go shopping with it." He went on to say that bid shopping is less common on federally funded projects.

Interviewee #SD47, representing an African American female-owned firm, indicated that bid shopping occurs so frequently in the construction industry that it is almost an accepted practiced: "Our prices used to get shopped — I've heard that's just the way the industry works. Construction is a shrewd, cutthroat, hard knock type of industry, and that that's the way business is done. [Prime contractors] get your prices, they shop around and play around with them …"

SDTA #9, representing a public works trade organization, said that his organization's clients often complain about bid shopping, but that his organization is unable to verify its occurrence: "We hear about [bid shopping] all the time but are unsure if this is actually taking place."

**A few interviewees reported that bid shopping is not a significant issue in the construction industry.** SDTA #7, representing a construction trade organization, indicated that bid shopping is not an issue in the construction industry. He explained, "[Prime contractors] don't do this calling back and forth too much saying 'Hey, if you lower your bid [by] 10 percent we'll give [the contract] to you.' [Bid shopping] used to be a big deal, but now the listing law took care of that to a certain extent. … I'm sure [bid shopping] happens still, but not as much — it just seems like there has been a cultural change."

Interviewee #SD21, representing a Caucasian male-owned firm, reported having no knowledge of bid shopping taking place in the construction industry.

**Experience and expertise**

**The majority of interviewees cited a firm's experience and expertise as a barrier to being successful in the public and private sectors.** SDTA #7, representing a construction trade organization, reported that experience and expertise are substantial barriers to being successful. He explained, "You actually have to learn to build something to be a contractor. … Politicians don't believe that — they just believe you can just take someone, and they can somehow magically get … bonding and all that stuff." He continued, "There's a perception among our political leaders that you can take people out of the general population, put them through some technical assistance, and they can be contractors. If you're taking someone out of the general population and trying to get them to build a sidewalk around the Airport, it's not like selling hot dogs — it's much more complicated." SDTA #7 added that it is becoming increasingly common for contractors to earn college degrees. He said, "You can't run these businesses for the most part without some academic background."

Interviewee #SD14, representing a Hispanic American male-owned firm, explained that a firm's experience is crucial to its success. He said that firms have to know what they are doing when they take on a contract, and they also have to establish their brand, because according to Interviewee #SD14, "Construction is about trust."

Interviewee #SD21, representing a Caucasian male-owned firm, also indicated that experience and expertise are crucial to being a successful firm. He argued that firms have to be qualified to remain competitive. Otherwise, they put themselves in the position of having to deal with "uncontrollable risk."

Interviewee #SD20, representing an Asian American male-owned firm, indicated that it is more difficult for less established, small firms to compete for and win federally-funded projects in the engineering industry, because those contracts tend to be awarded on a qualification-based selection process. In other words, firms have to be deemed qualified in order to win contracts rather than simply submitting the lowest bid.

Interviewee #SD22, representing a Caucasian male-owned firm, reported that experience is definitely a barrier to staying competitive in his firm's industry. He indicated that people have to know what they are doing to be successful: "[success takes] a little bit of smarts [and] lots of perseverance."

Interviewee #SD28, representing a Caucasian female-owned firm, said that people need to take classes to learn how to work in her firm's industry, so expertise can be a barrier to success.

Interviewee #SD24, representing a Caucasian male-owned firm said that in order to remain competitive, firms have to be experienced with good reputations, have a history of quality work, and hire excellent, experienced personnel.

Interviewee #SD26, representing a Caucasian male-owned firm, stated that many contractors go out of business, because they do not know anything about running a business. They assume that contractors make a great deal of money without considering overhead costs. When asked how one learns to run a business successfully, Interviewee #SD26 replied, "Surround yourself with smart people."

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that many public agencies require firms to have experience working for their agencies before awarding contracts, which is a difficult requirement for new firms to meet: "They require the company to have the experience — [that is ]to say [they] have worked … in the past in public works …. [But[ it's very hard to even get the first job and get your foot in the door."

**Personnel**

**Some interviewees indicated that finding good personnel is a barrier to being successful in the public and private sectors.** Interviewee #SD20, representing an Asian American male-owned firm, explained that finding good employees is difficult in the engineering industry, particularly for a less established firm. He said, "Why would a good engineer come work for you if you just started a company? Why wouldn't they work for a firm that's been around for thirty years? [Less established firms] are definitely at a disadvantage."

Interviewee #SD24, representing a Caucasian male-owned firm, reported that the recession in the 1990s and a "post-baby boomer dip" undermined the development of a pool of experienced personnel in the environmental services industry. He went on to say that to remain competitive, firms need good personnel who have 10 years or more of experience.

Interviewee #SD19, representing a Caucasian male-owned firm, reported that her firm's most substantial barrier is related to "management of the firm — keeping employees happy with benefits and pay."

Interviewee #SD29, representing an African American male-owned firm, indicated that it is difficult to find good employees who are willing to work for his firm, even in the current economy: "It's hard to get good people." He said that it is particularly difficult to find people who have experience in his firm's industry.

Interviewee #SD32, representing an African American male-owned firm, indicated that although his firm has no trouble finding experienced personnel in the current market, in stronger economic times it is difficult to find personnel with the necessary experience working on government projects. He said that it is crucial for a firm's employees to have experience dealing with the paperwork and bureaucracy associated with government work.

Interviewee #SD37, representing a Caucasian male-owned firm, said that to remain competitive in the marketplace, firms have to establish an exceptional staff: "It's a people business. You have to have the proper people in place. Estimators need to know how to estimate, project managers need to know how to manage, foreman need to have a sense of how to control their men without being overbearing and get the most out of them."

Interviewee #SD41, representing a Caucasian male-owned firm, said that it is difficult to find good personnel in construction: "Finding personnel is the biggest hurdle these days. In construction, there is not an abundance of kids who want to get into the industry and get dirty. They are now playing on computers. They want to show up with a laptop, not a shovel. It is hard to find good, young people to start at the bottom and work their way up both in the field and in the office."

Interviewee #SD44, representing a Hispanic male-owned firm, indicated that good personnel can be difficult to find: "To get a competent employee that is trustworthy … you probably have to go through some people …."

Interviewee #SD45, representing a Caucasian male-owned firm said that finding good personal is "the toughest part [of a firm being being successful]." He explained that the current state of the economy and the lack of work in San Diego have forced skilled workers to leave the area.

Interviewee #SD46, representing an African American male-owned firm, indicated that it is difficult for small firms to attract good personnel: "Most smaller companies do not have the kind of revenue to keep [skilled personnel] on board or even to hire them." He went on to say that good persoonel is crucial to a firm's success: "Personnel is one of the keys to being competitive and also advancing."

**Other interviewees indicated that personnel issues are not a barrier to being a successful firm.** Interviewee #SD21, representing a Caucasian male-owned firm, said that he was not aware of any barriers related to personnel and labor in the construction industry. He said that "prevailing wage" laws in California make it relatively easy for construction firms to attract good employees without those wages being unreasonably high.

Interviewee #SD16, representing an African American male-owned firm, indicated that finding qualified personnel is not an issue for his firm — a much larger issue for his firm is finding capital to pay those employees: "If I had the cash flow I could do very well."

Interviewee #SD28, representing a Caucasian female-owned firm, said that in the current market, it is relatively easy to find good labor. He explained that in the past, other firms would actively try to

steal their employees but with the slowdown in the economy, there are plenty of people available for work.

Interviewee #SD43, representing a Hispanic male-owned firm, said that finding personnel is not difficult for her firm, because of her firm's contacts and because there are "a lot of people without work" in the current economy.

**Learning about work**

**Several interviewees indicated that it is difficult to learn about available projects.** Interviewee #SD2, representing a Caucasian female-owned firm, reported that it is hard to find out about available projects from most public agencies. She said that she has tried to get her firm on agency lists, but that the process is too time consuming. However, she acknowledged that agencies *try* to let contractors know about available projects.

SDTA #6, representing an Asian American trade association, reported that her organization struggles with disseminating information about available projects to their membership. It is her feeling that public agencies are not in close enough contact with her organization and do not reach out to them with information about work opportunities.

SDTA #11, representing a veterans trade organization, said that disadvantaged businesses do not learn about available contracts soon enough. He said, "I don't think [agencies are] getting RFIs (Requests for Interest) out fast enough." He said that disseminating RFIs earlier would help disadvantaged businesses compete more effectively for contract awards.

SDTA #2, representing a Hispanic American trade organization, indicated that his membership learns about available projects through on-line listings and by word-of-mouth. However, he went on to say that small businesses need to be educated on how to find out about available projects and on how to be competitive.

SDTA #1, representing a local chamber of commerce, indicated that learning about work is particularly difficult for small firms: "For many of the smaller firms, it's ... a challenge to be fully aware of the opportunities that are out there." He went on to say that those firms also need assistance in trying to "maneuver around the opportunities and requirements for ... public work."

**DBE fronts**

**A number of interviewees reported having direct knowledge of MBE/WBE frauds or fronts, including supply brokers.** Interviewee #SD4, representing a Caucasian male-owned firm, reported having knowledge of a female-owned firm that serves only as a supply broker. That is, according to Interviewee #SD4, if a prime contractor has trouble meeting DBE goals, they fulfill them last minute by using a supply broker, because prime contractors are not required to list supplier information during the bidding process. The supply broker marks up the costs of goods for the project, allowing the prime contractor to meet DBE goals.

Similarly, Interviewee #SD6, representing a Caucasian male-owned firm, indicated that there are quite a few firms listed as minority- or female-owned that are actually supply brokers — they do not

actually do any work, but rather provide goods at marked up prices so that prime contractors can meet DBE goals.

Interviewee #SD11, representing a Caucasian male-owned firm, spoke of a minority-owned firm that wins contracts but does not actually do any work or provide any goods — it is only included on contracts when the prime contractor needs to meet DBE goals. He said, "A lot of material brokers sprung up with the DBE program. It is hard to figure out who is a desk and who is a real business …. There are illegitimate businesses making money off of [DBE goals] … There are a lot of fronts going on." He went on to remark that, "Using [supply brokers] make you look better on the contract but all they are doing is marking up the contract."

Interviewee #SD28, representing a Caucasian female-owned firm, reported that one of her firm's largest competitors lists itself as a DBE firm, but it is neither minority- or woman-owned. She indicated that it is a mystery to her how the firm is DBE certified.

Interviewee #SD35, representing an Asian American male-owned firm, indicated having direct knowledge of DBE fronts and frauds: "Usually, [a] firm would say they were woman-owned or minority [-owned], but really, their wife was fronting or they would say their great grandma was from Mexico."

Interviewee #SD41, representing a Caucasian male-owned firm, reported that his firm uses MBE/WBE fronts quite frequently to fulfill participation goals, because there are not enough MBE/WBE firms in San Diego to fulfill them legitimately: "There are a lot of [fronts and frauds] out there … It is a niche for them to fill, and a great opportunity." He went to say, "I often thought about putting my wife on the head title holder of this company. We could all put of our wives on it because, especially in the government contracting, there are all types of set asides."

SDTA #10, a supplier trade organization, noted that he has encountered several MBE/WBE fronts in the past decade. He stated that self-certification is dangerous and that people will try to take advantage of the system in the absence of a thorough review and agency scrutiny.

SDTA #7, representing a construction trade organization, indicated that the Black Contractors Association perpetuates DBE frauds: "The Black Contractors Association will never give us a list of black contractors, but my guess is there's three or four, maybe five, that are real. There's a whole bunch of members, but they are all white contractors. …" SDTA #7 also said that when MBE/WBE contract goals have been in place in other parts of the country, prime contractors often paid MBE/WBE subcontractors even though those subcontractors did not do any work, just so the prime contractors could meet agency goals: "… when we had quotas we would just find a minority …. Typically though, [the minority contractor] wasn't actually doing anything. We would just do the work and give that person a percentage of it."

Similarly, SDTA #5, representing a government advisory commission on minority issues, said that the Black Contractors Association in San Diego is a front: "The Black Contractors Association is a front. [They are] pimping the system." She went on to say that particular contractors have "had it out against the Black Contractors Association … for their fraudulent behavior."

**A few interviewees reported having no direct knowledge of MBE/WBE frauds or fronts but nonetheless suspect that they exist.** Interviewee #SD6, representing a Caucasian male-owned firm,

wondered, "What percentage of [SBEs] are nothing more than a front for larger companies that are not [SBEs]?" He said that he suspects that 85 percent of SBEs are just a front for larger companies.

Interviewee #SD40, representing a Caucasian male-owned firm, indicated that he has no direct knowledge of MBE/WBE fronts but is confident that they exist: "I am sure [MBE/WBE fronts] are out there. You wouldn't be asking if the perception wasn't out there [that they exist]. However we haven't ever dealt with this." He continued, "Unfortunately the perception of fronts and frauds places a negative stigma on the DBE program."

SDTA #1, representing a local chamber of commerce, said that he is aware of MBE/WBE frauds and fronts, but that he is not aware of any that do business in San Diego.

**Several interviewees reported having no knowledge of MBE/WBE frauds or fronts (e.g., Interviewee #SD20, Interviewee #SD21, and SDTA #2).**

**False DBE reporting**

**Some interviewees reported knowledge of false reporting as it relates to MBE/WBE participation.** Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that, in the past, agencies or prime contractors would call MBE/WBE firms for bids and list them as subcontractors even if they did not ultimately use them. However, Interviewee #SD14 made clear that false reporting does not occur anymore, because DBE goals are no longer mandatory deeming the practice unnecessary.

Interviewee #SD20, representing an Asian American male-owned firm, described a situation in which a prime contractor used his firm's resume as part of their proposal for a large public project and got "short listed." A few weeks later, Interviewee #SD20 heard that the prime contractor won the contract, but when he contacted the prime contractor to discuss his firm's role in the work, the prime contractor told him that it decided not to use his firm after all. Of similar situations Interviewee #SD20 said, "It happens, it still happens."

Interviewee #SD16, representing an African American male-owned firm, indicated that he received an offer from a North Carolina-based prime contractor that would pay his firm 3 percent of the contract without having to do any work — the prime contractor was only interested in his MBE status. Interviewee #SD16 turned down the offer.

Interviewee #SD45, representing a Caucasian male-owned firm that is DVBE certified, described an experience in which a prime contractor solicited a bid from his firm to which his firm responded. Interviewee #SD45 later learned that the prime contractor erased information from the bid and reused it on other projects without Interviewee #SD45's knowledge or permission. Interviewee #SD45 also became aware that the prime contractor made fraudulent payments to his firm to make it appear as if his firm was involved on the other projects.

Interviewee #SD46, representing an African American male-owned firm, indicated that his firm often receives bid solicitations as part of good faith efforts on the day the bid is due, a practice that violates USDOT code: "[Sending solicitations the day that a bid is due] is actually not legitimate. [Prime contractors] are manipulating the dates on their paperwork … because [solicitations to MBE/WBE firms are] supposed to be [sent] two weeks prior [to the the bid due date]."

SDTA #2, representing a Hispanic American trade organization said that false reporting occurs often with good faith efforts.

**Price discrimination by suppliers**

**Some interviewees reported awareness of price discrimination by suppliers.** Interviewee #SD2, representing a Caucasian female-owned firm, said that her firm was discriminated against a few years ago by a supplier. She said that the supplier would not do business with her firm because it was woman-owned.

Interviewee #SD16, representing an African American male-owned firm, said that it is difficult to disentangle price discrimination based on race and gender from receiving worse prices as a result of being a smaller firm: "The cost of paint is measured by volume of purchase. Therefore, smaller businesses feel the impact. Institutionally the smaller business is the minority-owned business. This type of discrimination is hard to prove."

Interviewee #SD28, representing a Caucasian female-owned firm, described a situation in which a supplier refused to continue to supply materials to her, because one of its larger competitors threatened to stop using the supplier if it continued to work with her firm.

Interviewee #SD45, representing a Caucasian male-owned firm, indicated that he has experienced price discrimination by suppliers due to the small size of his firm: "If you're not a large user, they'll sometimes jack up the price or won't provide a bid at all."

Interviewee #SD47, representing an African American female-owned firm, reported that her firm cannot establish accounts with suppliers due to her ethnicity and stereotypical attitudes: "We still can't get account like everybody else." She went on to say that the situation is made even more difficult, because some large projects require her firm to use certain suppliers that do not treat her firm well: "[On certain projects], the vendor is built in … they know we have to use them."

**A few interviewees reported that suppliers quote different prices to different firms, but that the practice has nothing to do with race or gender.** Interviewee #SD30, representing an African American male-owned firm, indicated that "bigger firms get a bigger discount" because of the quantity that those firms buy. Interviewee #SD30 said that price differences between firms have nothing to do with race or gender.

Interviewee #SD31, representing a Caucasian male-owned firm, indicated that several factors determine supplier prices. First, firms with a reputation of doing quality work get better prices from suppliers than firms with bad or no reputation. Second, large firms get better prices than small firms, because they tend to buy in larger quantities.

**Good faith efforts**

**Many interviewees reported that some prime contractors do not use genuine good faith efforts to locate qualified and available DBE subcontractors.** Interviewee #SD16, representing an African American male-owned firm, characterized good faith efforts as "a numbers game for the prime contractors." He said that prime contractors often solicit his firm for bids with no intent of using it in order to fulfill good faith efforts. His firm has received solicitations for industries in which they have

never done work and for projects that are not even remotely near its geographic location. Interviewee #SD16 said that he is able to recognize when his firm receives a bid solicitation only because the prime contractor is trying to fulfill good faith efforts: "I know that if I am requested to bid on a project at the twelfth hour with no access to plans — this is a strong indicator that something is not right."

Interviewee #SD30, representing an African American male-owned firm, said that he is aware of prime contractors abusing the good faith efforts process. He said that some prime contractors solicit disadvantaged firms for bids with no intention of actually using them, only to fulfill good faith efforts. He stated that good faith efforts cannot be effective if "[prime contractors] are not sincere about them." He went on to say that he does not support the idea of subcontractor goals: "I'm not for quotas or mandatory [requirements] … I think that's a bad thing — I would like to think that that wouldn't … be necessary.'

Interviewee #SD31, representing a Caucasian male-owned firm that is DVBE certified, stated that his firm receives bid solicitations on a daily basis from large firms that leave him with "ridiculously" short amounts of time to respond. He indicated that firms send those solicitations with no intention of considering his firm for work — instead, they are only interested in fulfilling good faith efforts: "It's obvious to me that they're just going through the motions."

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that in her experience many prime contractors are not genuine about fulfilling good faith efforts. Instead, she thinks that those firms just make sure that they contact enough MBE/WBE firms to fulfill good faith efforts but have no intention of actually using them. She said, "I think they're just trying to meet the requirements most of the time."

Interviewee #SD46, representing an African American male-owned firm, indicated that some prime contractors will mislead MBE/WBE firms into thinking that they will be included as part of a bid when in fact those prime contractors are only interested in fulfilling good faith efforts and have no intention of including the MBE/WBE firms. Interviewee #SD46 said, " … large firms, especially for government projects, they solicit [minority-owned firms] to put a package together, and they lead you on … saying you're a part of the bid package, and once the job is awarded you find out you're not a part of [the bid package]."

Interviewee #SD47, representing an African American female-owned firm, commented that a number of MBE/WBE firms, particularly new ones, have the misconception that prime contractors contact them because they are interested in working with them. She indicated that often they are only interested in fulfilling good faith efforts: "When you're a subcontractor and you're new to the game, you're naïve. You get all these faxes from all these companies that want you to bid. You get silly and think, 'Look at all these people that want to work with us.' No, they don't want to work with you. You're on a list … They go into these databases, they don't know who you are and don't care. They want to document that they faxed you a bid invitation so they can show they outreached to a minority or woman-owned firm."

SDTA #6, representing an Asian American trade organization, said that she does not believe that DBE goals and good faith efforts are effective and that prime contractors abuse the program. As an example, she said that several large companies have faxed her information about projects to distribute to her membership, and then considered that information to fulfill their good faith efforts.

SDTA #2, representing a Hispanic American trade organization stated, "Good faith efforts are a joke."

Similarly, SDTA #9, representing a public works trade organization, said that there are circumstances in which prime contractors will contact his organization when they are looking for SBE- or DBE-certified subcontractors, and that the practice can sometimes be problematic as it relates to good faith efforts: "The problem with this is that those prime contractors then use their phone call as good faith efforts that are submitted on public contracts, and they really haven't tried [to find SBE or DBE firms]."SDTA #9 indicated that there needs to be more oversight for MBE/WBE programs and good faith efforts to be effective: "[Our organization] has been getting notices on work that is not done by subs, so they are being used to get the contract but are not getting the dollars or the work committed to them. There needs to be oversight. …" However, SDTA #9 went on to say that those agencies that do not have MBE/WBE programs have poor participation among minority- and female-owned firms: "Overall, those agencies that don't have goals or programs are struggling in their diversity numbers. If the goal isn't supported by a public agency, their numbers are going to reflect that commitment and they will not be impressive."

Interviewee #SD14, representing a Hispanic American male-owned firm, stated that no remedies would be effective for increasing MBE/WBE participation until mandatory goals are reinstated. Regarding good faith efforts in particular, he said, "You [have to] do away with the good faith efforts." He believes that good faith efforts should only play a role on smaller contracts (i.e., contracts with only a few pieces), because for those contracts prime contractors might have a difficult time finding MBE/WBE firms that are available for the type of work that they require.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that in her experience many prime contractors are not genuine about fulfilling good faith efforts. Instead, she thinks that those firms just make sure that they contact enough MBE/WBE firms to fulfill good faith efforts but have no intention of actually using them. She said, "I think they're just trying to meet the requirements most of the time."

Interviewee #SD45, representing a Caucasian male-owned firm that is DVBE certified, stated he frequently receives bid solicitations one or two days before bids are due or for work that is outside a reasonable geographic area. Regarding such practices, Interviewee #SD45 siad, "That's the game [some prime contractors] play to meet the requirements. They say 'We solicited them, I informed them.'"

**A number of majority-owned firms indicated that they do not support DBE goals or good faith efforts, because it is too difficult to find minority- or female-owned firms who are available for or interested in the work.** SDTA #7, representing a construction trade organization, stated that DBE goals and good faith efforts do not generally work, because agencies do not spend enough time carefully considering the availability of minority and female contractors. With regard to African American contractors specifically, SDTA #7 indicated that the small African American population in San Diego does not justify race-conscious goals for that group. He said, "… there is just a small black population in San Diego. What is it — five to six percent or something? So every time we get into these squabbles with city council it's because they want 10 percent of the contracts given to blacks. Well it's just not going to happen. They aren't [in the construction industry]." In describing his organization's position on DBE goals, SDTA #7 said, "… I think in general we are going to fight

situations where [agencies are] trying to disguise a quota and bring it in …" With regard to good faith efforts, he stated that they involve, "just pushing paper, everybody knows that … that's just political cover, it always has been."

Interviewee #SD11, representing a Caucasian male-owned firm, reported that taking the effort to fulfill good faith efforts is not problematic but getting results is difficult. He said, "We do 90 percent of our work [ourselves], so it is hard to find subs to do this type of work." In describing his firm's position on DBE goals and good faith efforts, Interviewee #SD11 said, "If the DBE program is race neutral then I don't have a problem."

Interviewee #SD7, representing a Caucasian male-owned firm, described several problems with the good faith efforts process. He said that there is no indication of experience level when firms fill out MBE/WBE paperwork, so there are a number of firms that are not qualified to do the necessary work. He also complained that many of the minority- and female-owned firms that he solicits for bids are not receptive to his solicitations — they will say "Quit bugging me" or some will not even know why he is soliciting them to bid on a project. Interviewee #SD7 indicated that the process can be frustrating: "It's like beating your head against a wall."

Interviewee #SD4, representing a Caucasian male-owned firm, reported that the number of usable bids that he receives from soliciting MBE/WBE firms for bids is very low, making it difficult to fulfill good faith efforts. He estimated that of the MBE/WBE firms that he solicits for bids, only 15 percent will typically respond, 35 percent of which will be out of business by the time he follows up with them.

Interviewee #SD21, representing a Caucasian male-owned firm, stated that blanket, one-size-fits-all goals are not very effective, because different industries have different availability rates of MBE/WBE firms. He said that DBE goals should be tailored to fit different sectors of construction work based on the number of DBEs available to do work within each sector (e.g., higher percentage goals should apply to those sectors with a larger number of available DBEs). With regard to the difficulty of fulfilling good faith efforts, Interviewee #SD21 said, "It is easier to meet or exceed a [DBE] goal than it is to meet or exceed the requirements of documentation and solicitation of good faith efforts."

Interviewee #SD11, representing a Caucasian male-owned firm, reported that their disapproval of DBE programs stems from public agencies only being concerned with MBE/WBE participation numbers: "… if you didn't use the DBE guy, [public agencies throw] your bid out because you were supposed to use them. The public agency is only looking for numbers, they never policed the program. …" He went on to say that it is very difficult to find MBE and WBE firms in his firm's industry that are certified and are capable of completing the work that his firm requires.

Interviewee #SD41, representing a Caucasian male-owned firm, said that his firm has experience little success in finding MBE/WBE firms to participate on contracts: "Our success in finding DBEs has been absolutely terrible. They don't exist or they can't bid the scope of work. No one will turn a bid in. It is really hard to find [MBE/WBE firms]!"

**Some majority-owned firms indicated that they do not support DBE goals or good faith efforts, because the process is too costly or time consuming.** Interviewee #SD7, representing a Caucasian male-owned firm, reported that DBE programs require much more than good faith efforts. He said that if his firm receives interest from an MBE or WBE firm, then they have to "hold their hand"

through the process, which can be quite costly and time consuming. The process includes: copying the plans and specifications for the MBE/WBE firm, walking the firm through the plans, and ensuring that the firm has all the addendums to the project. He went on to say that "99.9 percent of the time," the MBE/WBE firm does not even bid on the project, so his firm might as well "take that cost and flush it down the toilet."

Interviewee #SD6, representing a Caucasian male-owned firm, reported that his firm spends an average of $200,000 per year to fulfill good faith efforts (including Disadvantaged Veterans Business Enterprise goals). He said that his firm spends anywhere between $5,000 and $10,000 on good faith efforts for each job on which they bid, and they win perhaps one out of every 15 of those jobs. Interviewee #SD6 referred to good faith efforts as an "abomination of cost."

Interviewee #SD24, representing a Caucasian male-owned firm, indicated that DBE goals and good faith efforts are a frustrating aspect of competing for public sector work: "It's frustrating when [DBE goals and good faith efforts] make the process longer and more expensive. Public work is already more expensive [than private work]. When you add another layer … that can be a frustration, particularly if some agencies have some fairly onerous requirements." He added, "Obviously the fewer requirements there are, the easier it is for us. …"

Interviewee #SD41, representing a Caucasian male-owned firm, said that DBE Programs are ineffective: "[The DBE program] is not working. I don't see the benefit. There has to be a better way." He continued, "[The DBE program] makes it tougher to do business. I am a firm believer that if you work hard and are honest, you are going to do well in life. I am not out to give anyone help for no reason. The not working for it I have a problem with. If you are a hard worker you will be profitable."

**Two majority-owned firms reported having their bids thrown out, because of reasons related to DBE goals and good faith efforts.** Interviewee #SD3, representing a Caucasian male-owned firm, stated that his firm bid on a project in which they failed to meet the 15 percent DBE goal but fulfilled their good faith efforts. Nonetheless, the awarding agency tried to throw out their bid. Interviewee #SD3 reported that his firm had to hire a $300 per hour attorney to fight the decision (which they ultimately won).

Interviewee #SD4, representing a Caucasian male-owned firm, reported that his firm bid on a project on which there was an addendum that extended the bid deadline by one week. Although his firm advertised for MBE/WBE subcontractors for the first three weeks, they did not advertise during the final week. The awarding agency found that the firm did not fulfill their good faith efforts, and their bid was thrown out. Interviewee #SD4's firm contested the decision but were unsuccessful.

**Some interviewees indicated that they support DBE goals and good faith efforts.** Interviewee #SD20, representing an Asian American male-owned firm, indicated that DBE goals and good faith efforts are beneficial to minority- and female-owned firms: "Those [measures] are really helpful."

Interviewee #SD27, representing a Caucasian male-owned firm, indicated that his firm supports DBE goals and good faith efforts. He said that if society has operated in a way that has disadvantaged certain minority groups, then it should take steps to try and right those wrongs. However, Interviewee #SD27 went on to say that he can appreciate the fact that there are some people who believe that giving preferential treatment to minorities and women is unfair.

Interviewee #SD28, representing a Caucasian female-owned firm, reported that good faith efforts help DBE firms be considered for contract opportunities: "I really think [good faith efforts] help a lot of companies get their foot in the door and … to compete with [larger firms]." She went on to say that a number of prime contractors would not have used her firm if not for DBE goals, and now the firm has strong, working relationships with a number of prime contractors.

Interviewee #SD40, representing a Caucasian male-owned firm, indicated that he supports DBE programs and does not think that they should be eliminated, particularly the Airport's program: "Don't remove the program. I think the Airport has taken a lot of time to see what fits the community." Interviewee #SD40 went on to note that his firm implements internal MBE/WBE participation goals. However, Interviewee #SD40 said that he does not believe that mandatory set-asides are fair: "I personally don't believe in [race- or gender-based set asides]. I think you need the best qualified firms to do the work. I have a hard time ethically saying that a certain amount of work should be set aside for a certain type of firm. Let's get the best firms to do the work."

SDTA #6, representing an Asian American trade organization, indicated the DBE goals are helpful to minority- and female-owned firms. She said, "If you … are not as conscientious as the Airport then [race- and gender-based] targets are important."

SDTA #1, representing a local chamber of commerce, stated that his organization supports DBE goals and good faith efforts, because they give agencies concrete targets. He referred to them as "good policy."

SDTA #3, representing a local chamber of commerce, said that her organization also supports DBE goals and good faith efforts. She said that they encourage a strong work force, and they encourage people to "get in there and start."

SDTA #13, a retired official from a local public agency, indicated that DBE goals are useful, because they provide agencies information about which remedies have been effective and which have not. She also said that the goals provide an opportunity for minority and female-owned firms to interact directly with prime contractors.

Interviewee #SD35, representing an Asian American male-owned firm, reported that DBE goals have been very beneficial to his firm, especially before Proposition 209: "Because we were DBE and federally-funded contracts needed minority participation, they would call us to bid."

Interviewee #SD37, representing a Caucasian male-owned firm, indicated that he does not oppose good faith efforts and does not consider goals to be a problem: "I think any required percentage they want to set for MBE/WBE is fine. Otherwise, the big contractors would take over and there would be no work left for the small contractors."

**Double standards in performance**

**A few interviewees reported that prime contractors and agencies hold MBE/WBE firms to an unfair standard of performance.** Interviewee #SD20, representing an Asian American male-owned firm, said that he has often heard from other firms that when something goes wrong on a project, the scrutiny is much worse for minority- and female-owned firms than it is for majority-owned firms. Regarding those accounts, he said, "I see some truth in it."

Interviewee #SD28, representing a Caucasian female-owned firm, indicated that small firms (including MBE/WBE firms) are held to more stringent standards than larger, more-established firms. She said that double standards were especially a problem for her firm when it was just starting: "In the beginning, I really felt like we had to go the extra mile to prove ourselves, because [prime contractors] didn't think we could do the job. I don't feel it as much anymore — maybe it's because we're proving ourselves. …"

Interviewee #SD2, representing a Caucasian female-owned firm, reported that WBE firms have to complete projects better and faster than majority-owned firms in order to receive the same recognition.

Interviewee #SD34, representing a Caucasian male-owned firm, said that MBE/WBE firms "… need to do double the amount of work [and] get it done the first time [without] being given a second chance" in order to receive the same amount of recognition as majority-owned firms

Similarly, Interviewee #SD29, representing an African American male-owned firm, reported that DBE firms have to work "twice as hard" as majority-owned firms to win the same number of contracts and to receive the same recognition. He went on to say that DBE firms also have to have lower prices than majority-owned firms to remain competitive.

Interviewee #SD30, representing an African American male-owned firm, said that smaller firms are held to different standards than larger firms, but he indicated that the practice is to be expected: "If you're a small or minority firm … [prime contractors] would probably would watch you a little more carefully or inspect your work a little more closely just because it's their first time dealing with you."

Related to those comments, Interviewee #SD31, representing a Caucasian male-owned firm, said that although small, MBE/WBE firms are not held to different standards than large, majority-owned firms, initially MBE/WBE firms might have to answer more questions about their competence and their ability to do the work.

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that double standards exist in the construction industry such that small firms (including MBE/WBEs) have to accomplish more to receive the same amount of recognition as majority-owned firms: "[Small firms] just [can] expect to do more or to go way beyond in order to be able to get the job with the same client again."

SDTA #1, representing a local chamber of commerce, indicated that although he does not have any direct knowledge about prime contractors and agencies holding MBE/WBE firms to different standards than majority-owned firms, he said, "I don't doubt that it happens …"

**Unfair contract denials**

**Several interviewees reported having knowledge of unfair contract denials as a result of race, ethnicity, or gender.** SDTA #10, representing a supplier trade organization, stated he was aware of a situation in which a minority-owned firm initially won a contract, but that the awarding entity terminated the contract when it found out that the firm was minority-owned. SDTA #10 said, "Prime contractors can say they tried to work with an MBE, [but] too often they are unfairly treated and dismissed."

Similarly, Interviewee #SD20, representing an Asian American male-owned firm, said that he suspects that unfair contract denials occur, but that the discrimination is too subtle to be perceived: "All [prime contractors] have to do is find *some* reason [to deny a contract]."

SDTA #13, a retired official from a local public agency, indicated that unfair contract denials occur as a result of discrimination on the part of prime contractors, but that it would be difficult for anyone to prove: "… when you look at the contractors, the prime contractors, no one is going to admit that they excluded a person because of their color or gender. It is going to be very hard to prove that discrimination has occurred."

**Some interviewees reported having no knowledge of unfair contract denials as a result of race, ethnicity, or gender.** Interviewee #SD2, representing a Caucasian female-owned firm, and Interviewee #SD21, representing a Caucasian male-owned firm, both reported having no knowledge of unfair contract denials.

**Recommendations related to good faith efforts**

**A few interviewees recommended that public agencies do a better job of enforcing MBE/WBE utilization.** Interviewee #SD10, representing an African American male-owned firm, stated that public agencies should make prime contractors prove that they are utilizing MBE/WBE subcontractors that they list during the bidding process: "Every public sector job should be audited during and after construction. If you use an MBE — prove it! This should be done during and after the contract."

Interviewee #SD16, representing an African American male-owned firm, expressed a similar sentiment: "A challenge to the certification program is to ensure that if the prime uses the certified sub on a bid that they use them on the job. Public agencies should continue reporting and further their checks and balances of programs."

Similarly, SDTA #5, representing a government advisory commission on minority issues, indicated that more information about which firms receive awards would improve DBE/ACDBE programs: "I want to know what the history and who is doing the work. How do you know you are winning the game if you don't know the score?"

### C. Caltrans anecdotes regarding perceived general barriers to participation in the public and private sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**Good ol' boy network**

#### 1. Obstacle to pursuing or obtaining business

**A substantial barrier reported by interviewees, both DBE and non-DBE, in obtaining work in the public and private sectors was the perceived inability to "break into the market" due to the pre-existing relationships among prime and subcontractors.** In this respect, most interviewees

reported the existence of a "good ol' boy network" in the California Transportation industry. Many interviewees viewed this as an obstacle to the pursuing or obtaining work. (CT Interviewees #6, #7, #8, #10, #29, #31, #32, #33, #39, #44, #51, #65, #66, #79, CATA #1, #2, #3). These interviewees expressed feeling closed out of opportunities because certain prime contractors use subcontractors within their own network and, therefore, do not solicit or accept bids from others. Others either did not believe there was a good ol' boy network or did not see it as an obstacle to receiving work (CT Interviewees #1, #34, #45, #46, #48, #50, #73). Some interviewees thought the good ol' boy network was more prevalent in the private than the public sector, others thought it occurred in both sectors.

Interviewees reported they are "quite often" (Interviewee #CT6), "frequently" (Interviewee #CT8), "quite a bit" (Interviewee #CT10) and "a lot of times" (Interviewee #CT51) shut out of a job because the prime contractor already has a preferred subcontractor. Interviewee #CT17, a white male-owned firm, stated that because of a "good old boys club" the same group of firms gets all of the Caltrans work in his area. Interviewee #CT40, a white male-owned firm, stated that the company is in the "good ol' boy network" because the company "has been around forever." Interviewee #CT51, a Hispanic male-owned firm, could not say or know whether he was shut out because he was not the prime contractor's buddy or because of any prejudice or discrimination.

Interviewee #CT7, a white female-owned business, reported that she never received an RFP from certain cities. She stated it was not necessarily because they are a DBE firm, but because they are not "in the good old boy system." She stated that it is hard to maintain relationships with project managers at large prime contractors (in order to get what DBE or small business work is available) because these people often move from one firm to another and those firms already have particular subs in their own network that they use.

A white female-owned professional services provider in the construction management field testified at a public hearing in Los Angeles that "There's still very much an old boy network, I'm sorry to say. And if you're not an old boy, you're not in that network." According to this DBE, "there's a lot of information that you don't get." At the "golf course meetings, the information . . . flows." She believes the DBE Program "allows us to have an equal playing field." (P.H. Los Angeles, 3/29/07).

Interviewee #CT13, a Pakistani male-owned firm, found it "very difficult to break in" and get work from prime contractors on Caltrans projects, mainly because the prime contractors always use the same subs and "don't see any reason of cultivating relationships [with and] providing jobs to new DBE firms when they got nothing to gain financially in doing that." CATA #10, an Asian American trade association, stated that some of the small firms have a good relationship with some larger firms and in that case the larger firms will use those small firms no matter what. Without goals, he believes, primes will use the firms with whom they have the best relationship or who they think will give them the lowest cost.

According to CATA #11, a minority trade association, the primes working for Caltrans have been working for Caltrans for many years. Most of them have bought all their equipment and their own plants. If they need a supplier or a subcontractor they use the same one they have always used so "they don't have to think or worry or try something new." CATA #1, an Asian American trade association, said that it is difficult to get on a Caltrans job as a subcontractor, because you have to know the primes and it takes years to build these relationships. He also said that generally primes already have their teams formed and are not looking for new and different DBE firms.

An African American DBE trucking company who testified at a public hearing in San Diego would like Caltrans to encourage primes to use different DBEs. Caltrans should tell them to "use so many of these guys, just don't put us with all your friends. Because it's a network system out there, and if you're not a part of that network system, you're not going to get it." (P.H. San Diego, 3/22/07).

An African American DBE consulting firm testified at a public hearing in San Diego that the "number one thing" that "puts DBEs at a disadvantage is access to decision makers." The project engineers tell the large prime contractors about opportunities early on "maybe they go out to drinks every once in a while … or see each other on the golf course." (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, testified at a public hearing in San Diego that "As for barriers that I can see for Native American companies … for all disadvantaged companies is to be able to work with the prime contractor for them to really take you serious. Because they have a good ol' boy system, and it doesn't matter if it's a white company, a white woman company, it's still there. And unless you can have a connection with the prime, it's hard to get that work." (P.H. San Diego, 3/22/07).

Interviewee #CT11, a Native American male-owned firm, is familiar with the "good ol' boy" network, but perceives that it is more of an issue with smaller agencies, e.g., the cities, than Caltrans. These smaller agencies say that it has to do with which companies they are comfortable working. Caltrans is "fairly good about being very stringent in their standards."

A DBE commercial roofing contractor, stated: "We have BEEN treated fairly by most prime contractors we currently have business contact with. (Written testimony submitted 3/27/07).

A woman business owner stated, "Attending pre-bid meetings tends to be fruitless. The primes appear to know the firms they will work with before the meetings begin. Their attendance appears to meet a pre-bid requirement only." She stated she was told by a business counselor, and "it is my perception and his too, that it doesn't make sense to call oneself disadvantaged. It is tantamount to calling myself a loser before I even make it out of the gate." (Written testimony submitted 4/15/07).

### 2. DBE prime contractors prefer to use DBE subcontractors

**Some DBE firms explained that they were more likely to use their DBE friends as subcontractors on their projects.** CATA #11, a minority trade association, reports that his DBE members tend to use DBE subcontractors. "People tend to use people that they are comfortable with." "A DBE contractor would tend to gravitate toward the DBE contractor … they talk the same language, they understand each other's philosophy." Very rarely, he said, would a DBE subcontract to a majority-owned contractor.

A white female-owned professional services provider in the construction management field testified at the Los Angeles public hearing and reported "we make every effort to include colleagues or small businesses. And we make an effort to make sure they have work on our team because we know what that's like." (P.H. Los Angeles, 3/29/07).

Interviewee #CT69, a white male-owned trucking company, stated that there is a network of Hispanic business owners that pass the work to each other. The dispatchers are Hispanic and

therefore more likely to call the Hispanic truckers. As a white male, he feels it has been more difficult to get work because of this network.

CATA #2, an African American trade association, indicated that neither he nor his association's members had experience soliciting bids from or utilizing DBEs on Caltrans projects because, he said, they are "almost always" subcontractors on work for Caltrans. He stated that for work for other agencies, the Association's members almost always use other DBE firms as subcontractors (or whoever has the expertise if there is no goal). He also stated that in the private sector his company and other of the association's members try to use other DBE firms if they can but also use non-DBE firms in situations where other DBE firms are unavailable to do the work. He gave as an example his company's using non-DBE firms to haul its products because there are no DBE firms that own trucks to haul the products. According to CATA #2, people like to work with people that look like them or with whom they are comfortable. The association's members subcontract work to other DBE or "non-majority" firms, and the association encourages small firms to team and work together because it gives them more financial and equipment strength and thus allows them to land bigger contracts.

### 3. Natural and unavoidable

**Some interviewees feel that selecting business partners based on relationships was natural and unavoidable.** Interviewee #CT79, an African American male-owned firm, stated that networks are a fact of life and that people will always want to work with the people with whom they have built relationships. Interviewee #CT66, a white male-owned firm, said that it "occasionally" happens that he is closed out of an opportunity to work because there is a good ol' boy network in place, but said that "it . . . works both ways too" and he sometime receives work because of a relationship.

Interviewee #CT46, an Asian American male-owned firm, said that "every contractor has . . . the people that they're comfortable working with." He did not feel that prime contractors chose not to use certain subcontractors because those subcontractors were DBEs but rather because the prime contractor went with someone "in the comfort zone of . . . their own personnel." CATA #7, a Filipino trade association, stated that firms prefer to work with companies with which they have worked in the past, but that once you establish a relationship with the firm, you get more work. He did not believe the network is race-based, but rather relationship based.

Interviewee #CT45, white male-owned firm, stated that "other than mandatory pre-bids," he did not see a good ol' boy network: "All you have to do is be low bidder and have a bid bond." CATA #2, an African American trade association, stated that the association's members were often closed out of opportunities to work as subcontractors because prime contractors use someone within their own network. He stated that it is understandable that a company would want to use a firm that it has used before and knows can do good work. The problem, said CATA #2, is that prime contractors' past experiences are almost always with white male-owned firms. The DBE program gives DBE firms a chance to "get into the arena" and show their skills to and develop relationships with prime contractors.

Interviewee #CT1, a Native American male-owned firm, is familiar with the good ol' boy network but does not believe it affects his ability to obtain or engage in business. When a prime contractor contacts a subcontractor about a Caltrans job, he assumes "that they have some kind of history with a subcontractor."

**Bid shopping**

**Many interviewees reported that they had experienced bid shopping by prime contractors.** Interviewee #CT1, a Native American male-owned firm, said he does have a lot of pressure to lower his prices. He said that with the first subcontract he did for Caltrans, the prime contractor "basically said here are the prices, take it or leave it."

Interviewee #CT8, a Hispanic male-owned firm, indicated that bid shopping is something that "happens frequently," usually after prime contractors are awarded a contract. Interviewee #CT16, a white male-owned firm, stated the company had experiences with bid shopping by prime contractors after a contract had been awarded, but that these experiences had been in other states (in California, Caltrans purchases the product directly from the company).

Interviewee #CT33, a Hispanic female-owned firm, stated that bid shopping was something that "happens a lot," that the company "get[s] cut down sometimes[,]" and that this often happens without the company even being asked. She said that this cutting down usually happens after the prime contractor is awarded the contract or during negotiations. Interviewee #CT33 also said that there were times when she had "called their bluff" and had the primes tell her they were going to use someone else, only to come back months later saying that they wanted to use her company after all.

Interviewee #CT34, a white male-owned firm, had no experience with or knowledge of bid shopping. He attributed the lack of bid shopping to the way that services are contracted out in his Caltrans district, saying that typically selections are made on the basis of qualifications and that the actual bid is not prepared until after the firm has already been selected.

Interviewee #CT49, an African American male-owned firm, said that bid shopping was something that happens, "frequently" particularly on larger jobs and for Caltrans. He also said that because of the practice or threat of bid shopping, firms bidding as subcontractors on larger jobs sometimes are forced to submit bids that are higher than they otherwise would be, since these subs can expect to be bid-shopped by the prime.

Interviewee #CT81, a Hispanic male-owned firm, feels primes do shop DBE bids around to their construction buddies because there's no way that a big company could undercut his bid without knowing what it was. However, he doesn't feel that DBE bids are being shopped around because of the DBE's race, but rather because the primes get used to working with the same people. The large contractor gets used to working with a large electrical company, and they want to keep it that way. He is not being passed over for jobs because of his race, but it is just hard to break into these personal relationships companies have built with each other.

CATA #1, an Asian American trade association, stated that he had heard about bid shopping from the association's members but had no personal experience with it. He said that the association had been talking with Caltrans about bid-shopping as well, and that Caltrans had taken a strong stance and made "good progress" in this area. CATA #2, an African American trade association, said that though he had never been bid-shopped, a lot of the association's members had, especially on construction contracts and usually after the prime is awarded the contract (when the primes also try to substitute their subcontractors and tell Caltrans that the sub originally listed did not want to do the work). CATA #2 said that bid shopping, though it still happens, was a bigger problem in the 1990s than it is today (namely because Caltrans had stopped allowing a 10-day turnaround or review

period after awarding its contracts to primes) and was something that the association had addressed with Caltrans through discussions on the Small Business Council.

A Hispanic female-owned consulting firm explained, at a public hearing in Los Angeles, that contractors sometimes bid shop out the DBEs number to "to their own subsidiary companies to bid against DBEs" so that they can "justifiably deny participation" based on price. (P.H. Los Angeles, 4/4/07).

**Bid manipulation/different bid criteria**

**Very few interviewees reported they had experienced bid manipulation.** Some interviewees had heard of the practice but had no personal experience. Interviewee #CT33, a Hispanic female-owned firm, described a situation where her company submitted two RFPs on a job (she did not know if Caltrans funding was involved), one for urban design and streetscape. She feels that her company had the best chance of getting the streetscape job, since it had won the previous streetscape job four years earlier. But, according to Interviewee #CT33, the two proposals were combined after they had been submitted separately, and the company did not get the streetscape job. Interviewee #CT33 said that had she known the two proposals would be combined, she would have pursued a different strategy.

Interviewee #CT46, an Asian American male-owned firm, relayed an experience where his company bid as a prime but then lost the bid and was given as the reason that the company had not correctly satisfied the job's DBE requirement. Interviewee #CT46 stated that this job was then re-bid, but he did not know whether or not the awarding of the job to his firm was protested only so that the job could be re-bid. Interviewee #CT46 did say that it was a common practice for agencies and districts to re-bid their jobs "multiple times just to get the price down." He did not think that this re-bidding had anything to do with "the minority status or requirements[,]" but that it is "just their technique." He also stated that he had "[n]o proof on it [this practice of re-bidding,]" but did feel "that's what they do all the time."

Interviewee #CT65, a white male-owned firm, has knowledge of bid manipulation and kickbacks, especially on Caltrans work where brokers and truckers have been involved.

CATA #1, an Asian American trade association, said that bid manipulation was not so much a problem compared to prime contractors wanting to substitute their subcontractors after being awarded a contract. CATA #1 said that the association had addressed this issue with Caltrans for the past decade, and that though Caltrans had made efforts and "some progress" to mitigate this problem, there is "still a long way to go."

A small African American owned construction company located in Chula Vista testified at a public hearing in San Diego, that two years ago he attempted get a contract on the South Bay toll road. The DBE requirement was in the double digits. Over the holiday, he put a team together, which included the required number of DBEs, and prepared the bid. When the solicitation came out the requirements had changed. He had to put a whole new team together. The company was not ultimately selected. He stated that the bid was not opened like it normally is but rather, he had to inquire as to whether he got the job. "After being treated the way we were treated in the bid, after them knowing that we were going to be bidding on it and then changing the specifications, and the specifications were changed to that extent that … it was very difficult." (P.H. San Diego, 3/22/07).

**DBE Fronts**

**Only a few interviewees reported direct knowledge of "fronts." Most interviewees reported no knowledge of "fronts." Some of these interviewees stated that while they had no direct knowledge, they suspected that they occurred.** CATA #7 believes it is hard to monitor in the consulting realm since the president does not need to be the architect or engineer. Companies can put up a minority president who has very little control.

Interviewee #CT75, a white male-owned firm, has seen WBE and MBE shams. Some so-called "women" owned businesses are in fact fully operated by the husband or two friends decide to put the business in her name and file for certification with the understanding that the female friend will take no part in the business. Another example is where two individuals join in an informal partnership in which the minority will file for certification and the white man will be the actual person in charge. According to Interviewee #CT75, everyone knows this sort of thing happens, and that it happens a lot.

**Some viewed fronts as undermining the DBE program.** Interviewee #CT29, a Hispanic male-owned firm, said that fronts injure the DBE Program. And that because of fronts prime contractors may question whether he is also a "sham." He stated that in California, the "responsible managing employee" designation allows this to happen because it allows companies to use other companies' licenses to bid on work.

**Some interviewees thought Caltrans did an adequate job policing for fronts and saw the existence of fronts declining.** Interviewee #CT51, a Hispanic male-owned firm, stated that there were "a lot" of DBE fronts at the beginning of Caltrans' DBE Program and certification process, but that Caltrans had done a "very good job of investigating those people" and now does a better job of policing DBE fronts.

CATA #1, an Asian American trade association, encountered fronts "quite a bit" in the past, especially in the construction field. He gave an example of concrete mixture firms that would set up DBE firms to get their subcontracts and that would use these DBE subs as brokers to get supplies. He thought that the government had cracked down "quite strongly" on DBE fronts, but he said that they still surface. CATA #2, an African American trade association, said DBE fronts were more common in the 1990s than today, and thought the practice had gone more underground since then (in part because some people in San Diego went to jail over this).

Interviewee #CT75, white male-owned firm, does not believe that Caltrans, or any state agency, can prevent sham DBEs. He stated that the state has no formal mechanism by which they can verify that the individual requesting certification will be an active leader of the company. However, Interviewee #CT75 believes that it the end it does not matter since the only time DBE status is going to help is when the bids are close, which is not often. Interviewee #CT75 doesn't think there is any formal reporting mechanism for DBE shams and questioned whether they were even against the law. Interviewee #CT76 does not believe fronts have been a problem in the last five years, and since the suspension of the goals he says there is no real money in the schemes.

**Many interviewees reported that female fronts are more common than minority fronts and that these fronts most often occur in the context of an owner putting the business in his wife's name.** Interviewee #CT6, a white female-owned firm, said that he knew of DBE 'fronts' (several of

them large companies) where wives were given 51 percent or more ownership of a company that their husbands actually owned and ran. Interviewee #CT31, an African American female-owned firm, said it is not at all uncommon to go to meetings with WBEs and "never see the woman." Interviewee #CT33, a Hispanic female-owned firm, knew of "a couple of women owned businesses where the woman is not really involved."

**Some interviewees had knowledge of minority fronts.** Interviewee #CT69, a white male-owned firm, reported that non-certified companies will take racial minority employees, help them start their own company, and get them certified. The newly certified DBE will use the non-certified company's equipment, manpower, etc., and in return the non-certified company gets to bid jobs as a DBE. The two companies split the money. He says minority status automatically gets you more money. CATA #3, a Hispanic trade association, said "I think they're around . . . ." He said some DBE fronts eventually become legitimate, meaning, for example, that the person who nominally runs a business actually learns it. "We wonder sometimes about certain ones, but it's hard to know. It's really up to the agencies to do their homework."

An African American male-owned small printing business stated, at a public hearing in Los Angeles, "if you go back 15 years ago … most of the small business in this country … were managed, owned, operated by men. If you fast-forward … today those businesses are run by women … in most cases … women are the wives of the men that ran them before." (P.H. Los Angeles, 4/4/07).

### False DBE reporting

**Very few interviewees reported they had experienced or heard of false DBE reporting by prime contractors.** Very few interviewees reported any knowledge of this practice. Interviewee #CT40, a white male-owned firm, thought it would be difficult to get away with false reporting on a public works contract. Interviewee #CT33, a Hispanic female-owned firm, had no knowledge of false reported stating "[y]ou don't question that."

CATA #10, an Asian American trade association, stated his firm has been named as a subcontractor on a contract but after the prime is awarded the contract they do not hear anything. That happened pre-Caltrans race-neutral program.

### Good faith efforts

**Many DBEs report that prime contractors sometimes do not actually engage in genuine "good faith efforts" to utilize DBEs.** Interviewee #CT8, a Hispanic male-owned firm, stated that prime firms often falsify their good faith efforts to utilize DBE firms: "The people who are seeking out the DBEs generally could care less about a DBE." According to Interviewee #CT8, "the DBE program is a good program, but I think a lot of people bypass it just simply [by] doing their good faith effort and things of that nature and really don't take much interest in the DBEs themselves … the good faith effort is what it's all about, instead of actually using a DBE."

According to Interviewee #CT8, "basically all they do is meet their good faith efforts and never have any intentions of using us." He estimated that his company winds up working on only about 25 percent of the Caltrans jobs for which it is contacted to submit a bid. For bids for which the company is solicited on work for other public entities, Interviewee #CT8 estimated that the percentage was even lower and stated that his company did not "get as many of" these jobs as they

did the ones for Caltrans work. Further, noted Interviewee #CT8, the company is usually trying to meet a DVBE goal as opposed to a MBE or WBE goal, and that the amount of work that the company subcontracts out varies but typically is between anywhere from 5 percent to 25 percent of the total contract amount.

Interviewee #CT67, a white female-owned firm, had not heard of prime contractors falsifying their good faith efforts to utilize DBEs, but she questioned the sincerity of many firms when undertaking these efforts and whether they in fact are made in good faith. Similarly, Interviewee #CT75, a white male-owned business, had no personal knowledge of primes falsifying their good faith efforts, but he sometimes hears about it happening.

According to CATA #1, an Asian American trade association, prime contractors do not "falsify" their good faith efforts to use DBE firms, but they undertake these efforts in a rather "strategic manner" and use good faith efforts as a loophole to get around using DBEs. For example, said CATA #1, prime contractors will sometimes put out a request for solicitations and give firms only 24 hours to respond. He mentioned another instance (on a water project in San Diego in winter 2006) where his firm submitted a bid to a prime but never heard back. He said that two or three months later his firm got an email from the agency saying that the prime could not certify his firm as a DBE.

A small African American owned construction company testified at a public hearing in San Diego and stated "I think that a lot of prime contractors are disingenuous when it comes to really being forthright and really soliciting participation from these companies … you do have contractors that do make a good faith effort … I know with Caltrans, San Diego, they have this annual event where they recognize contractors that have done an exceptional job, so there are those that do. But my feeling is that probably the vast majority of large prime contractors do not make a good faith effort." He noted that there are "a ton of resources" designed to help prime contractors locate qualified DBEs. He listed Caltrans website, "lots of associations, the Black Contractor Association, the National Multi-Cultural Association, women in construction associations." Prime contractors should utilize these sources as part of their good faith. "Why as a small business can I do it and a lot of the large primes contractors seem not to be able to?" (P.H. San Diego, 3/22/07).

A DBE consulting firm testified at a public hearing in San Diego, "We used to call good faith efforts 'good fake efforts' because all you have to do is program the numbers into the fax machine, hit, you know, fax blast." He recalls a project at the Oakland Airport where the prime had an "incentivized contract to include small and local businesses." The way the contract was structured if the prime did not use these businesses it was penalized, the more it used the more it earned. "They hired local consultants; they went out and talked to the people, because the last thing they wanted was to lose money." A representative from a minority trade association, who testified at a public hearing in Sacramento agreed: "I believe that there needs to be some specific compliance, or if you will, chief or incentive penalties or financial incentives to get them engaged in the process of working with small business contractors." (P.H. San Diego, 3/22/07).

A Hispanic female-owned consulting firm testified at a public hearing in Los Angeles that "lack of consistent and proper review of good faith efforts, pre and post-award" is a barrier. "While many agencies have instituted a proactive review of good faith efforts, some agencies only review the good faith effort requirements if there is a complaint filed." (P.H. Los Angeles, 4/4/07).

A DBE and 8A company submitting written testimony stated they have received hundreds of phone calls regarding an invitation to bid over the past few years within one to two days of a bid deadline, which has made it impossible to bid. (Written testimony submitted 3/26/07).

A certified DBE, submitting written testimony, stated that when the race-conscious goals were in effect, "Many prime consultants/contractors considered good-faith outreach requirements and DBE participation goals as a 'burden and a nuisance' and devised creative ways to circumvent those requirements." (Written testimony submitted 4/12/07).

**Some DBEs believed prime contractors were falsifying their good faith efforts because they were contacted for work outside their specialty or at the last minute.** A minority female-owned business testified at a public hearing in San Bernardino that the company has been solicited from prime contractors "very little" since receiving certification. "I think the two letters that I've received from prime contractors looking for a disadvantaged business have been something that I don't do. It has nothing to do with me at all. They sent me a letter. So I can't understand … why they would send me something for construction workers … to me for a security guard?" (P. H. San Bernardino, 3/20/07).

**One DBE stated that primes comply with good faith efforts.** Interviewee #CT34, a white male-owned firm, stated that he was not aware of any prime contractors falsifying their good faith efforts and that going through the good faith efforts requirement is "a pretty standard way of doing business here locally", and "kind of an accepted part of the way things operate."

**Some non-DBEs expressed frustration over good faith efforts because DBEs are difficult to find and the process is costly.** Interviewee #CT76, a white male-owned firm, is not personally aware of people falsifying their DBE utilization, but he stated he was sure it does happen. According to Interviewee #CT76, some of the good faith effort requirements are almost impossible to comply with, so falsifying one's efforts is almost a necessity. CATA #2, an African American trade association, stated that most prime contractors now have staff and/or departments that handle their good faith efforts compliance.

**Some noted that DBE availability was an issue.** Interviewee #CT9, a white male-owned business, stated that it is "hard to give away that much work" on City contracts where the DBE goal is 25 percent, and that sometimes the company is not awarded a contract because they did not meet the DBE goal on a previous project. The interviewee stated also that when working for the City of Los Angeles, his division spends more time tracking the accounting and making sure that DBE goals are satisfied than it does actually doing the work. Interviewee #CT9 spoke specifically of a current contract where 20-30 percent of the cost is going to administration, and he called it "a waste."

Interviewee #CT46, an Asian American male-owned business, stated that it sometimes is hard to meet DBE goals because it is difficult to find DBE firms in one's area that do certain specialty work. According to Interviewee #CT46, many firms are unable and/or unwilling to travel a long distance just to work as a subcontractor on a project because "[l]ogistically, it's a nightmare."

Interviewee #CT40, a white male-owned business, noted that sometimes it's difficult for his company to meet DBE goals because they can only use contractors that are certified by the union; there are few DBE union contractors. Elimination of DBE requirements has made it much easier for Interviewee

40's company to enter into subcontracts. Interviewee #CT40 does not have any experience with DBE utilization in the private sector: "They don't follow the same rules that public sector does."

But, Interviewee #CT17, a white male-owned business, stated also that many DBE firms are "very limited" in how much they can help (because of their size), and that "it's also difficult to get the percentages of time that they need to satisfy the State requirements" — i.e., that "getting them [the DBE subcontractors] enough time" can be "difficult at times."

**Other firms felt it was not difficult to find DBE.** Interviewee #CT10, an African American male-owned business, stated that when he uses the Caltrans DBE list, that he has had no problems finding qualified DBEs or meeting DBE goals, and that his experiences utilizing and working with DBEs had been favorable. Interviewee #CT49, an African American male-owned business, said that he never had any problems finding DBEs or meeting project DBE goals.

Interviewee #CT51, a Hispanic male-owned business, said that he never encountered a DBE goal in the private sector; that, even though it was hard to find DBE firms to perform certain specialty work (he gave the example of electric welding and said that if there are DBE firms that do this work, they are probably so busy that you cannot get them to work on your contract), the company never had any problems meeting DBE goals; and that the company usually tries to subcontract out upwards of 40 percent of the work on a job. He also said that the easiest way to deal with the percentage issue is to lay out in the specifications a certain percentage of the work that must be subcontracted out.

**Some felt Caltrans needed to do a better job enforcing good faith efforts.** According to CATA #2, an Asian American trade association, Caltrans' "biggest problem" is that it accepts too much good faith, which, he said, is the basis upon which upwards of 85 percent of Caltrans contracts are awarded. He said that no one polices prime contractors' good faith efforts and that Caltrans needs to be more proactive in challenging their good faith efforts. CATA #2 stated that the Association had addressed this issue with Caltrans "all the time" and that Caltrans' response was that it was doing all it could but lacked adequate resources. He also stated that nowadays, since the Caltrans DBE program has been suspended, prime contractors do not even use good faith efforts but instead just award contracts based on the lowest bid. He said that before primes at least gave the appearance of trying, and that "if [the DBE program] wasn't working under [a] race-conscious system, you know it's not working under [a] race-neutral [one]."

**Some DBEs stated that there is "no way of knowing" whether a prime contractor is falsifying his or her good faith effort on a particular project.** Interviewee #CT31, an African American female-owned firm, stated that when you do not get on a project team, there is no reason to pursue the matter further because no one is going to help you. According to Interviewee #CT31, it would be a waste of resources to do investigative work as to good faith efforts. Interviewee #CT49, an African American male-owned firm, stated that there is "really no way of knowing" whether prime contractors falsify their good faith efforts to utilize DBEs. Interviewee #CT51, a Hispanic male-owned firm, had no evidence but believes it happens on Caltrans projects and others. CATA #2, an African American trade association, said he had no proof that prime contractors were falsifying their good faith efforts to utilize DBEs, but that Caltrans was not verifying whether or not primes make these efforts and should do a better job of doing so.

**Some DBE interviewees stated that DBEs are sometimes listed on the bid and then their work is cut or they are never used.** CATA #3, a Hispanic trade association, stated that he did not know about any prime contractors falsifying their good faith efforts to utilize DBEs, but that sometimes contractors put DBE firms on a bid list just to play a minor role and thereby try to "minimize [the DBEs'] work," and that he had heard about situations (he mentioned one particular one out of state) where prime contractors just give subcontractors a check without actually doing any work. CATA #7, a Filipino trade association, believes this is prevalent. He has also seen situations where the prime wins the project and never calls the DBE whose quote he used in the bid. Interviewee #CT29, an African American male-owned firm, believes companies do not care whether the DBEs are real or not, just that they have satisfied the requirements. As for falsifications, Interviewee #CT29 stated that he has heard of a contractor taking the certifications obtained from his good faith efforts from a prior job and inserting them into future jobs without the knowledge of the DBE.

A small DBE information technology consulting firm who testified at the Los Angeles public hearing stated: "In our experience, what has happened is that we will be invited to formally bid on a project with a prime, and then once the prime has won the work … they then will call us and cut back on our hours, saying that they have budget constraints and therefore are not able to keep … what was initially proposed." She recalled an example: "I was on the District 59 contract that just ended. It was three years on call, and that team was successful. I was a subconsultant on that team. I never placed a single person, never got a dollar out of that contract." (P.H. Los Angeles, 3/29/07).

A female-owned DBE blueprinting company testifying at Los Angeles public hearing stated that "there are some situations where we were invited because of our WBE and SBE status. The really sad news is some of those – in a lot of cases, we haven't actually seen the work. They use your name and then you don't get the work. So it would be nice if there was some enforcement … some kind of monitoring system down the line a year later." This has happened to her five (5) times in the last year. (P.H. Los Angeles, 3/29/07).

**Recommedations related to good faith efforts**

**Several interviewees recommended Caltrans track and monitor DBE utilization through final payment and provide sufficient staff and systems resources to oversee compliance (CT Interviewees #6, #8, CATA #1, #2).** Caltrans should go behind good faith efforts to see that qualified and capable DBE firms were contacted and that DBEs included in the bids end up being utilized. The monitoring process should include participation by the contract manager, including reviewing substitution decisions by primes and auditing utilization goals on every contract. The monitoring process should also provide for subcontractor reporting (for example, notifying the subcontractors when payment is made to the prime or notifying the subcontract that it has been listed as a participant in a contract and allowing for response via a form).

CATA #2, an African American trade association, stated Caltrans should do a better job with contract compliance and making sure that DBE firms listed on bids are actually used for the work. According to CATA #2, Caltrans needs to do a better job of monitoring and enforcing prime contractors' good faith efforts. CATA #1, an Asian American trade association, would like Caltrans to hold project manages and proposal reviewers more accountable for enforcing the DBE requirements. Caltrans should increase the staff in its civil rights department (in part to help firms that cannot get

on the internet to look for contracts). Caltrans should implement a program and project goals for microbusinesses.

Interviewee #CT6, a white female-owned firm, stated that Caltrans needs to re-evaluate its DBE program. Though speaking with respect to small business certification specifically, Interviewee #CT6 conveyed that more needs to be done than simply placing firms on a list, since being on a list does not necessarily mean that a firm will receive business, as reflected by the company's experience with Caltrans after receiving small business certification at the urging of a Caltrans employee.

Interviewee #CT8, a Hispanic male-owned firm, would like Caltrans to go behind the good faith efforts requirement and "make sure that if they have a DBE out there that's willing to do the work and put out good prices for it, that they don't get bypassed by the good faith effort."

A representative of the Black Business Association of San Diego (an organization with 37 members) testified at a public hearing in San Diego that "we have many opportunities to bid on contracts . . . but as an end result the actual person that's working on the job is not the minority contractor. So one of the things I would recommend or suggest is that there can be something implemented as far as language, front-end, and back-end monitoring just to confirm that the actual worker in the end is a minority contractor." (P.H. San Diego, 3/22/07).

A representative of the Women Construction Owners and Executives testified at a public hearing in San Diego that pursuant to certain "listing laws" contractors are supposed to name all the subcontractors on the job at the time the contract is let. "Those don't always go down as far as they need to. And it's really a way to discriminate and eliminate and bid shop after a prime contract gets the job, with the listing law at the time of bid, and they show the amount of hours you're going to work or the amount of work you're going to do." (P.H. San Diego, 3/22/07).

### D. Telephone interview anecdotes regarding perceived general barriers to participation in the public and private sectors

The following anecdotes regarding perceived general barriers to participation in the public and private sectors were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**Several telephone interview respondents indicated that experience is necessary to be successful in the public sector.** Many respondents — both majority-owned and MBE/WBE — indicated that public sector work requires a great deal of experience in the transportation contracting industry. For example, a minority-owned firm said, "You have to have plenty of knowledge and you need a great background with what people have taught you [to be successful in the public sector]."

**Some telephone interview respondents indicated that public agencies award contracts to the same small group of firms.** Both MBE/WBE and majority-owned firms said that there is a network of large firms that win a disproportionate amount of public sector work. For example, a minority-owned firm remarked, "[Public agencies] seem to use the same people over and over."

**A few telephone interview respondents — representing both MBE/WBE and majority-owned firms — reported that unions can make it difficult to work in the public sector.** Those respondents indicated that many projects require union membership. For example, a majority-owned firm reported, "We have had to turn down contracts because the general contractor asks if we are union and we say 'No,' then we are turned down."

**Several MBE/WBE telephone interview respondents suggested that networking is difficult.** Many of those respondents indicated that it is difficult to break into the transportation industry. For example, a WBE firm in San Diego said, "San Diego is a very small connected network of people and everybody knows each other and there is a very established community of people who have been doing the same work for many years and it's difficult to get [into that network]."

**Some majority-owned telephone interview respondents indicated that there is too much emphasis on minority- or gender-status.** Those respondents indicated that there should be more emphasis on quality of work rather than on DBE status. For example, a majority-owned firm stated that often, MBE/DBE firms offer inferior products or services: "Agencies like our products and services, but the process often awards [contracts] to 'disadvantaged' companies. These companies either [provide] inferior products or fail to pay their bills. I believe the procurement system in place is flawed."

## XII. Experiences Working with the Consortium

### A. Consortium anecdotes regarding experience working with the Consortium

The following anecdotes regarding working with the consortium were obtained from interviews that the study team conducted in connection with BBC's 2009 Consortium study.

**Consortium officials and staff**

**Most interviewees reported positive experiences with Consortium officials and staff. (Interviewees #2, 3, 7, 9, 10, 11, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 36, 37, 38, 42, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he had experience with Consortium officials and staff when he worked with SANDAG. He stated that he had a very good and positive experience.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he has had good experiences with the Consortium officials and staff.

Interviewee #7, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that he has had experience with the Consortium officials and staff in the context of advising SANDAG on alternative energy sources and not necessarily in the construction industry. He stated that this experience was "fine."

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, reported that L.A. County MTA is rigorous in maintaining standards (e.g. pre-proposal meetings) and they know all of the rules. He stated that OCTA is a bit more informal, but he has no complaints.

Interviewee #10, a DBE-certified African American female-owned accounting firm, reported having a positive experience with Consortium officials and staff.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that the Consortium officials and staff are "really nice and very easy to work with."

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, stated that his experience with Consortium officials and staff has been positive.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has had positive experiences with Consortium officials and staff.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, had very limited experience with Consortium officials and staff, but stated that he had no problems.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that at the level that she deals with she has had a good experience working with Consortium officials and staff.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that the Consortium officials and staff are good people, but he emphasized that other people actually influence the results or events.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he has not run into any officials from the L.A. County MTA because he has not had any L.A. County MTA projects under his license. He had a project where he worked on an MTA project on the south side. He said he is fine with the L.A. County MTA staff when he has gone down to the L.A. County MTA's offices.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that so far he has had a positive experience working with the Consortium officials and staff.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, reported that she has had an excellent experience working with the Consortium member agencies and their officials and staff.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that the Consortium official and staff have always been nice and encouraging in her interactions with them.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has not had any problems with consortium officials or staff. He stated that for the most part, they were polite and informative.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, reported that he has had an "excellent" experience working with Consortium officials.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, stated that he had had an excellent experience in his interactions with Consortium officials and staff.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that Consortium officials and staff have been very courteous in their interactions with her.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, stated that he gets along with the L.A. County MTA officials and staff.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he has had an "okay" experience working with Consortium officials and staff, but noted he has not won any contracts with the Consortium.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, reported having had an excellent experience working with Consortium officials and staff.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, reported that the Consortium staff has been polite and responsive.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, stated that he has had a positive experience working with Consortium officials and staff, although sometimes they are slow to respond. He noted that they are polite and professional.

**Some interviewees reported mixed or negative perceptions of Consortium officials and staff. (Interviewees #8, 12, 13, 14, 15, 18, 34, 40, 51, TA #1).** Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that in his experience Consortium officials and staff are bureaucratic, "superficial," and "only partially accurate."

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that Consortium officials and staff are quite professional in what they do, but in many cases they are influenced by members of the agency board.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that the Consortium officials and staff are good and very professional although sometimes they are "slow."

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that his experience with Consortium officials and staff is "all over the place … some are very good and some are horrible." He stated that a lot of contracts extend over a period of years and they have endured staffing turnover five times in some instances.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, stated that sometimes he receives a mediocre response from Consortium staff and officials. Interviewee #15 reported that the officials are offensive when problems arise. Interviewee #15 said he often has to go over various project managers' heads because he feels there are issues of incompetence.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, thinks that her interactions and the staff were superb with OCTA, good with SANDAG, but with LA County MTA some personnel she felt had issues of incompetence.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, stated that she felt the Consortium officials and staff are not approachable. She believes it is a bureaucratic system that cannot be penetrated.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that dealing with Consortium staff has at times been rather frustrating because of the limitations they would put on things.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported having had an average experience working with Consortium officials and staff.

TA #1, the President of the Latino Business Owners of America, stated that he has had experiences with Consortium officials and staff. He stated that the agencies have set forth a good, well-intentioned mandate to reach out to DBEs. The programs, however, have not been successful for most of his members. He stated that members are not motivated to participate because they do not acquire work. He also stated that he feels there are issues as to staff accountability.

**Some interviewees reported having had no experience working with Consortium officials and staff. (Interviewees #1, 4, 5, 6, 29, 43, 56, 58, TA #2).** TA #2, the President of the Black Contractor's Association, stated that he has not had any experiences with Consortium officials and staff and has not heard about any such experiences by his members. He does state that the Consortium officials and staff he feels have never reached out to the Association.

**Consortium online websites**

**Some interviewees reported that the Consortium websites are "straightforward" and "helpful." (Interviewees #3, 4, 5, 11, 12, 13, 15, 17, 18, 21, 22, 24, 25, 27, 28, 30, 32, 36, 37, 38, 47, 48, 49, 52, 53, 54, 55, 58).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that he has found the individual websites useful.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has used the Consortium websites. The websites are straightforward, helpful, and provide useful information.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he has looked at SANDAG's website as recently as four months ago and reviewed the list of jobs on the site. He stated that he has not solicited any proposals from them. Interviewee #5 stated that he did find the website useful. He was looking to see the kinds of projects available in the area that his company might qualify for or to try to get involved with teams.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she likes OCTA's website and noted the automatic bid notification feature.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the Consortium websites are "good." He stated that the websites provide information about business opportunities and are "quite useful" in that regard. Some of the websites are automated and CAMM NET is "number one."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that Consortium websites are "fine."

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated that OCTA's website is good, but she has not used L.A. County MTA's website.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, reported having no problem with the Consortium websites.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, found the Consortium websites to be user-friendly.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that the Consortium websites are generally good and that the IBAC website and contract look-aheads are good.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated that Metro's website was productive.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he has been on at least one Consortium website and it was a pleasant experience; he was able to get what he needed.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that he found the Consortium websites easy to navigate.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she and her staff have been able to more efficiently navigate the Consortium's websites; so far it has worked out well.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he his staff reviews the Consortium websites for upcoming RFPs. He also stated that he uses the websites from time to time.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that the Consortium websites are okay.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the use, navigation, and content of the Consortium websites is excellent.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, does not use the Consortium websites but he believes that the information on the websites is adequate.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, stated that the Consortium websites have been okay when they have used them.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, reported no problems with the Consortium websites.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, stated that he has used the OCTA and the SANDAG websites and had no complaints to report.

**Some interviewees had mixed perceptions on whether the Consortium websites were helpful. (Interviewees 10, 20, 31, 33, 40, 43, 45, 50, 51, TA #1).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated the Consortium websites are "okay." Interviewee #10 stated that the website does have a section showing which contracts have been awarded and to whom, but she said this is never updated. She recommended keeping this section updated and expanding it for task order work type work too.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the Consortium websites are okay, but depend upon the agency.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated it should be easier to find the scope of work on the websites. He stated that they should have a tab with each field and with each dollar amount and qualifications and scope of work. He stated that it should be searchable.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, reported that she has had a "fair" experience working with some of the Consortium websites and noted that she had a difficult time navigating the L.A. Metro website.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, stated that he has had some difficulty locating the Consortium websites.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that his employees go on the Consortium websites every once and while. He stated that they are okay, but are not very user-friendly.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that the Consortium websites are not easy to navigate.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, indicated that he has had a relatively easy time working with the Consortium websites, but noted that sometimes they are too big to find what he is looking for.

Interviewee #51, a DBE-certified African American male owner of a construction management and contracting firm, reported that the Consortium websites are average in terms of the information available, the accessibility, and the ease of navigation.

Interviewee #54, a Caucasian male owner of a general contracting firm, did not have any complaints or issues related to the Consortium websites.

TA #1, the President of the Latino Business Owners of America, stated that the Consortium website is not helpful because it does not do any good to advertise projects that DBEs really cannot obtain.

**Other interviewees reported no experience with, or comment on, the Consortium websites. (Interviewees #1, 2, 6, 7, 8, 9, 14, 16, 23, 29, 34, 42, 44, 56, 57, TA #2).** Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, had never been on any of the Consortium agencies' websites and was not aware of their existence.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she does not visit the Consortium websites that often.

**DBE directory**

**Many interviewees were not aware of a DBE directory or were not aware of how to locate it. (Interviewees #1, 2, 3, 5, 6, 7, 9, 13, 16, 18, 19, 21, 23, 26, 28, 29, 32, 34, 36, 42, 43, 44, 47, 49, 51, 52, 53, 54, 56, 57, TA #2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, was not aware of a DBE directory but noted that he does receive calls from contractors to bid jobs. He said most of them are way outside the scope of their capability although some of the work is within their expertise.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, has no experience with the Consortium directory of DBEs and was not aware of it.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, was aware of a DBE directory for L. A. County MTA. He was not sure whether OCTA had such a directory, but he had not looked.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, was not aware of a Consortium DBE directory, but stated that she uses the City of Los Angeles' directory.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, was not aware of a Consortium DBE directory, but did not feel that she had any need for one.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, was not aware of the DBE directory, but was sure that it exists.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, had no knowledge of a DBE directory and stated that he would not use it anyway because he would never utilize a firm just because they were a DBE.

Interviewee TA #2 stated that he is not aware of any Consortium directory of DBEs. He stated that there used to a directory of DBEs published by the Port Authority, but he has not seen one lately.

**Some interviewees were aware of a DBE directory maintained by the Consortium or other public agency. (Interviewees #4, 8, 10, 11, 14, 15, 17, 20, 22, 24, 25, 27, 30, 31, 37, 38, 40, 45, 46, 48, 50, 55, 58).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, has heard that the Consortium has a directory of DBEs, but he has never looked at it.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, was aware of a directory of DBEs that was provided to him in the context of bidding on projects for the State of California. He spoke with a DBE and they told him that if he hired them it would be the first time ever. Interviewee #8 was also told by a project manager (on a non-Consortium public sector project) that he could "get around" the DBE requirement by buying stationary from the DBE.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, was familiar with both a federal and state list of DBEs.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that some Consortium members maintain lists of DBEs, but he is removed from that process.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she thinks that the directory should be a "one stop shop." It should be easy for the agencies and easy for prime contractors to view and select potential partners from the DBE directories.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, stated that she is aware of a Consortium directory of DBEs and she finds it helpful.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, stated that she is aware of a Consortium DBE directory, but does not use it that often.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that the L.A. County MTA's DBE directory is good.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, has never used the DBE directory, but believes that one exists. He receives a lot of calls from the Blue Book.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he is aware of the DBE Directory, but does not utilize it too much. He stated that he reviews it just to see who is on the lists.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, had heard of the DBE directory, but did not know where to find it.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that there was a DBE directory at one time, but she does not know the last time it was updated and she cannot locate hers.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, stated that the Consortium DBE directory is excellent.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the DBE directory is pretty easy to use.

**Some interviewees had issues with the DBE directory. (Interviewees #10, 12, 17, TA #1).** Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that some of the Consortium agencies have a directory of DBEs, and she feels it is helpful but not up to date. Interviewee #10 tried to use the DBE directory, but some of the letters that she sent to DBEs were returned with incorrect addresses and contact information. Interviewee #10 recommended bringing the directory up to date.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that each individual member of the Consortium has a directory of DBEs, but sometimes these are outdated.

TA #1, the President of the Latino Business Owners of America, stated that the Consortium directory of DBEs is outdated and unhelpful.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, recommended that the new California centralized database be changed or revised to reflect more accurately what jobs certain companies qualify for. Interviewee #17 found that there were problems with the way in which her company was listed

### B. Caltrans anecdotes regarding the DBE directory

The following anecdotes regarding the DBE directory were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**Experience with the DBE directory**

**Several of the interviewees were familiar with Caltrans' list of qualified DBEs and had experience using Caltrans' list (Interviewee #CT1, # CT 7, # CT 9, # CT 10, # CT 17, # CT 33, # CT 34, # CT 46, # CT 49, # CT 51, and # CT 76).** Interviewee #CT9, a white male-owned business, stated that he was aware of the list of DBEs that Caltrans provides and posts on its website, but that he "want[s] to hire qualified DBEs based upon personal knowledge and personal friendships . . . just as I want to hire my doctor or dentist." Thus, Interviewee #CT9 generally tries to avoid what he calls "the yellow pages approach." Interviewee #CT46, an Asian American male-owned business, noted that the municipalities for whom he works "get their [DBE] list from Caltrans" and "tell you to go to Caltrans' website to . . . find DBE subs." Interviewee #CT46 also stated that the company advertises for the majority of jobs on which it uses subcontractors, and that such advertising is in industry/trade papers and via faxes to the firms on Caltrans' DBE list, which Interviewee #CT46 said the company uses "all the time," and which he felt was a "very good resource."

Interviewee #CT29, a Hispanic male-owned business, stated that he knows that Caltrans provides a directory of ready, willing, and able DBE contractors, because "I always check that to make sure I'm still on it." Interviewee #CT33, a Latina, female-owned business, also had experience using the

Caltrans DEB list/database, to which she noted many other agencies and local governments provide links from their own websites.

Interviewee #CT34, a white male-owned business, said that the firm's marketing business development staff has access to the listing of Caltrans-certified DBE firms and that they would "regularly consult that list if in fact [the company] were attempting to find a DBE subconsultant." But, according to Interviewee #CT34, the company does not use the list too much because they already have "a regular network of DBE firms" that they "regularly" contract with for particular tasks. Interviewee #CT46, an Asian American male-owned business, described the Caltrans DBE list as a "very good" resource. Interviewee #CT46 said that other agencies often referred him to the Caltrans list.

Interviewee #CT49, an African American male-owned business, noted he was aware of Caltrans' DBE list/database and said that in the past Caltrans offered (at least indirect) assistance to contractors looking to locate DBE firms but that he did not know whether this practice continues. Interviewee #CT51, a Hispanic male-owned business, also said that what resources Caltrans provides in the way of locating DBE firms are "good" and "workable," and that "[w]hatever they can do to continuously improve is better." Interviewee #CT76, a white male-owned business, is aware of lots of online listings of ready, willing, and able DBEs. Interviewee #CT76 thinks Caltrans also provides directories for DBEs, but he hasn't personally used any of them.

Interviewee #CT7, a white female-owned business, thought the Caltrans DBE list "is a good list" and "isn't a problem," and stated that "if any of the prime firms say they have a problem finding DBEs or minority- or women-owned subs, they're lying." But Interviewee #CT7 suggested Caltrans should verify that firms on the DBE list are actually certified in their listed areas of specialization, noting he had seen firms that actually provide drafting services listed as engineering firms.

**Several of the interviewees were not familiar with Caltrans' list of qualified DBEs and did not have experience using Caltrans' list.** Interviewee #CT32, an Asian American female-owned business, stated also that she found out by "word of mouth" about other DBEs to whom her firm subcontracts work, and that she did not have any experience with using Caltrans' resources for this purpose.

Interviewee #CT40, a white male-owned business, doesn't have knowledge of how to locate qualified DBEs because they use the same companies all the time. Interviewee #CT50, a male-owned business, doesn't know of any resources provided by Caltrans regarding how to locate qualified DBEs.

Interviewee #CT48, an Asian American male-owned business, was not aware of any resources provided by Caltrans for locating DBE firms. Interviewee #CT64, a white male-owned business, is not aware of how to locate qualified DBEs. He is not sure whether Caltrans maintains a list. Interviewee #CT67, a white, female-owned business, and Interviewee #CT68, a white male-owned business, was not familiar with any resources provided by Caltrans for locating DBE firms. Interviewee #CT75, a white male-owned business and Interviewee #CT11, an Indian, male-owned business, do not know of any listing of DBEs.

**Recommendation regarding the DBE directory**

**Several of the interviewees had recommendations and general observations regarding Caltrans' listings of DBEs.** To find out what primes have expressed an interest in a particular RFP, Interviewee #CT29, a Hispanic male-owned business, suggests that he could call for the list of attendees at the mandatory meeting. For federal projects, the government will release names on the webpage, but he does not believe that California does this.

Interviewee #CT8, a white female-owned business, indicated that the company does not rely on the Caltrans' DBE database, but, instead, uses a company that locates subcontractors based on the criteria that his firm gives them. Interviewee #CT72, a white male-owned business, recalls an instance when he was bidding for a project with a DBE requirement. Interviewee #CT72 went through all the Caltrans directories of DBEs, as well as other publications, but could not find any DBEs that worked in his specialized field. The lists provided by Caltrans were seriously out of date, because many of the firms Interviewee #CT72 called were no longer in business.

Interviewee #CT81, a Hispanic male-owned business, finds DBEs from whom to solicit bids through his personal contacts.

Interviewee #CT40, a white male-owned business, usually uses the lists of DBE companies and sends out a lot of requests for quotes, but it is her experience that about one third (1/3) of the companies are either out of business or have nothing to do with the actual needs for the project.

CATA #1, an Asian American trade association, said that the resources provided by Caltrans for locating DBEs were "a little on the short side" and that Caltrans needs more staff in its civil rights department. CATA #3, a Hispanic trade association, said it would be good if Caltrans would publish a directory of DBE firms like that provided by the Metropolitan Transportation Authority, which he described as a "very good" and a "good resource."

CATA #10, an Asian American trade association, believes Caltrans should list the SIC code so they can know who does what on the DBE list.

## XIII. Participation in and Awareness of Race-, Ethnic-, and Gender-Neutral Programs or Measures

### A. Consortium anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures

**Outreach programs**

**Several interviewees had participated in or were otherwise aware of race-, ethnic-, and gender-neutral programs provided by the Consortium. (Interviewees #4, 5, 6, 9, 10, 11, 12, 13, 15, 17, 18, 20, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 42, 44, 45, 46, 47, 48, 50, 52, 55, TA #1).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that locally SANDAG does outreach efforts in conjunction with Caltrans to assist businesses by increasing their opportunities and skills to participate in Consortium projects. These are networking events with prime contractors. He has participated in some of these networking events. He sometimes found them helpful and sometimes not because the same prime contractors usually attend who already know you and what you can do.

Occasionally there are new firms enabling him to establish new contacts and relationships. Interviewee #4 stated that the last SANDAG event occurred last year. Interviewee #4 also recalled that he received notice this year from the Orange County Transportation Authority about a networking event but was unable to attend. Interviewee #4 suggested that these outreach efforts should continue. Interviewee #4 stated that he has not had any direct experience with programs that assist with bonding, insurance and financing, but had seen announcements from the agencies regarding such programs. He stated that he has never seen any educational or training programs or other programs on how to do business with the Consortium.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that SANDAG, CCDC (Center City Development Corporation), Port of San Diego and some other agencies had a networking event about three months ago at the Convention Center to assist businesses by increasing their opportunities and skills to participate in Consortium projects, but he was unable to attend. The purpose of the event was to meet people and help with the certification process. He also recalled a similar networking event in Los Angeles recently, but could not recall specifics. These events are advertised. Interviewee #5 is also on a mailing list with the CCDC so his company receives information about RFPs, jobs, training seminars, certification process, etc. through the CCDC.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, recalled receiving information about outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects many years ago, but did not recall anything about the program.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that the L.A. County MTA offers outreach programs. He stated that 20 years ago they had a program to assist DBEs with accounting. He did not know whether they still had such a program, but stated that it was very helpful. Interviewee #9 was not aware of programs to assist with bonding, insurance, or financing. He stated that L.A. County MTA has a program on "how to do business" with the Consortium.

Interviewee #10, a DBE-certified African American female-owned accounting firm, stated that the Consortium has a vendor fair, but that was the only outreach that she was aware of. She stated that the Consortium does ask whether small businesses need assistance with financing, bonding, or insurance; but she stated that from a CPA standpoint, the business must meet those requirements anyway and she does not feel that it is up to the Consortium to assist on that. Interviewee #10 stated that some of the Consortium members have information online on "how to do business" with the Consortium, but stated that basically you sign up on the vendor list and then receive an automated email.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that she was aware of emails regarding different education opportunities and training manuals on how to write a proposal and obtain insurance. She noted, however, that these programs all cost money.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the outreach effort by L.A. County MTA is "the most impressive" in terms of "embracing and

facilitating participation." He stated that L.A. County MTA has been holding a networking period for pre-proposal meetings which is helpful and provides for prequalification updates. He stated that they assist the smaller firms with their paperwork and connect with the bigger firms. He stated that the only problem is that most of the teams are set by that point, but that is not an L.A. County MTA "fault, it is just a reality."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that L.A. County MTA or the SBA may offer programs regarding bonding and financing.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has taken advantage of outreach programs regarding the completion of paperwork associated with Consortium work. He also has knowledge of programs assisting with monetary issues, but he has never actually used these programs. Interviewee #15 is also aware of educational and training programs, some even offered by other prime contractors. Interviewee #15 has also attended and participated in Consortium-agency sponsored vendor fairs.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has knowledge of and exposure to a lot of the Consortium's outreach efforts and efforts to assist businesses. Interviewee #17's company has taken advantage of many of these opportunities.

Interviewee #17 is also aware of programs that assist with bonding, insurance, and financing, but she hasn't attended these programs because her company is a professional services firm.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, is aware of outreach efforts by the Consortium to assist businesses by increasing visibility. Often she does not go to programs because she does not think that she can get work at those types of events. She does know of programs to assist with bonding, insurance, and financing.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, had knowledge of Consortium outreach efforts, but stated that programs to assist with bonding, financing and insurance are not very helpful. She had knowledge of educational and training programs and of programs on how to do business with the Consortium.

Interviewee #24, an African American female owner of a DBE/MBE/WBE-certified private investigating firm, was aware of programs offered on how to do business with the Consortium.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of outreach programs offered by the Consortium, including programs on how to do business with the Consortium.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, was aware of outreach efforts by the Consortium (including MTA and El Camino). She had heard of or otherwise participated in educational and training programs and programs on how to do business with the Consortium.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, was aware of outreach efforts by the Consortium including programs to assist with bonding, insurance, and financing, educational and training programs, and programs on how to do business with the Consortium.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, was aware of outreach efforts offered by the Consortium including programs to assist with bonding, insurance, and financing.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, was aware of outreach efforts offered by Caltrans and the L.A. County MTA, including educational and training programs and programs on how to do business with the Consortium. He has participated in a program with Caltrans in the past.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, believed the Consortium offered outreach programs, but had not participated in any.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated that his company had participated in a "meet the buyers" workshop and other educational programs offered by the Consortium. He had not participated in any programs on how to do business with the Consortium, but stated that he was going to start taking advantage of such programs.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that the Consortium has expended significant effort in outreach programs. She noted that Caltrans, in comparison, has done nothing in terms of outreach and they "do not try anything new." She stated that there are always seminars available to assist with bonding, insurance, and financing. She was also aware of educational and training programs and programs on how to do business with the Consortium.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, was aware of an annual business conference, but felt it was a "waste." She was also aware of a program on how to do business with the Consortium, but had a similar negative perception.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, was familiar with outreach efforts with TBAC — Transportation Business Advisory Counsel (an organization established under state law for Metro vendors). She was aware of programs to assist with bonding, insurance, and financing and with programs on how to do business with the Consortium.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, stated that she had participated in two workshops provided by Metro. She attended fairs that provided information regarding programs to assist with bonding, insurance, and financing. She was aware of programs on how to do business with the Consortium, but she had not attended any such programs.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the Consortium offers a lot of outreach efforts, but he

has always been suspicious of them and considered them to be shams. He was aware of programs on how to do business with the Consortium.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, reported having heard "vaguely" about programs on how to do business with the Consortium, but she did not know anything about it.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, was aware of programs to assist with bonding, insurance and financing having been offered in the past but nothing recent. He was aware of one or two educational and training programs offered by L.A. County MTA as well as programs on how to do business with the Consortium.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she had met people in the outreach department. She was aware of educational and training programs and programs on how to do business with the Consortium.

Interviewee #44, a DBE/MBE/SBE-certified African American male owner of a financial planning services firm, had experience with Consortium outreach efforts including educational and training programs and programs on how to do business with the Consortium.

Interviewee #45, a DBE/MBE/WBE/SBE-certified African American female owner of a diversity consulting firm, stated that she had heard of Consortium outreach efforts through Consortium personnel. She had heard of programs to assist with bonding, insurance and financing, educational and training programs (through Caltrans), and programs on how to do business with the Consortium. She stated that she participated in such a class with Metro.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, was aware of outreach programs offered by Metro.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that he had participated a long time ago in a program on how to do business with the Consortium. He was not aware of any other outreach programs.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, was aware of outreach efforts offered by the Consortium. He has participated in programs to assist with financing and bonding and on how to do business with the Consortium. He was aware of other educational and training programs, but had not participated in them.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that he was recruited by an outreach program. He stated that there is such a "tall doorstep that it makes it extremely difficult to put your hand down to pull people up with you." He was aware of programs to assist with bonding and financing and other educational training programs. He was not aware of programs on how to do business with the Consortium.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, was aware of Consortium programs to assist businesses with bonding, insurance, and financing. He was not aware of other outreach efforts offered by the Consortium.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, was aware of outreach programs to assist with bonding, financing and insurance, and had knowledge of programs on how to do business with the Consortium.

TA #1, the President of the Latino Business Owners of America, stated that agencies in Los Angeles are more active with outreach efforts to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He stated that they provide workshops and other activities from certification instruction to payroll. He stated that San Diego's agencies are not as good in developing outreach efforts. He stated that educational outreach is helpful, but if you do not address the way that businesses are doing business it is futile. TA #1 stated that he has heard of a few programs that assist with bonding, insurance, and financing and believes that these programs are generally good. He also stated that he has heard of a few educational/training programs. TA #1 also stated that he is aware of a few workshops sponsored by different agencies on how to do business with the Consortium, but believes that these programs will be futile unless Consortium agencies make a real effort to include DBEs on their projects.

**Several interviewees were not aware of any race-, ethnic-, or gender-neutral programs sponsored by the Consortium aimed at increasing small or disadvantaged business participation by increasing their opportunities and skills. (Interviewees #1, 2, 3, 5, 6, 7, 8, 14, 19, 21, 29, 41, 49, 51, 53, 54, 57, 58, TA #2). Other interviewees had very limited knowledge of such programs. (Interviewees #16, 22, 23, 37, 39, 43, 56).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, was not aware of any outreach or training programs offered by the Consortium or other agencies.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he has no knowledge of outreach efforts by the Consortium to assist business by increasing their opportunities and skills to participate in Consortium projects. He stated that he is aware of Caltrans networking conventions which take place at the end of October. Interviewee #2 also stated that he has not participated in these conventions in the past, but plans to attend if any similar convention is held in Southern California. Interviewee #2 also stated that he has no experience with or knowledge of any efforts to assist with bonding, insurance, and financing, efforts to implement any educational/training programs, or with programs on how to do business with the Consortium.

Interviewee #7, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that he has no knowledge of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. Interviewee #7 stated he has not had any experience with programs that assist with bonding, insurance, and financing, but believed that there are such programs. He stated that he is unaware of any educational/training program efforts. Interviewee #7 also stated that he is not aware of any programs offered by the Consortium on how to do business with the Consortium, but P-TAC (an organization funded by veterans) offers programs about how to do business with the Consortium. The program is sponsored by the Water Authority.

Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated he was not aware of outreach efforts by the Consortium to increase business opportunities, but he expects that that might occur. He stated that prime contractors have in the past offered to assist him with bonding, but he has never pursued that.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, did not have knowledge of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He did not have any knowledge of programs or efforts to assist with bonding, insurance, financing, educational or training programs. Interviewee #14 noted that L.A. County MTA does publish a newsletter.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, has no experience with various outreach efforts by the Consortium entities or others, except for a small business program through the City of L.A. and L.A. County MTA's programs that provide small business assistance with bonding, insurance, and financing.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, had no experience with outreach efforts by the Consortium, but was aware of programs to assist with bonding, insurance and financing, educational and training programs, and programs on how to do business with the Consortium.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, had seen flyers offering educational and training programs, but had never participated in any.

Interviewee #37, an African American male owner of a SBA-certified architecture firm, stated that he had heard of some business conferences, but never attended any of the conferences. He stated that he was not aware of any programs to assist with bonding, insurance, or financing or educational and training programs. He stated that he had heard of seminars on how to do business with the Consortium, but had not participated in these seminars.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, reported that she is vaguely aware of outreach efforts offered by other agencies in order to increase participation of DBEs and small businesses in doing work with the Consortium.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that he had seen a flyer advertising a program on how to do business with the Consortium, but he did not attend the program.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, reported that in the past the Consortium offered outreach efforts to assist small businesses, but he stated that these programs no longer exist.

Interviewee #56, a Caucasian male owner of a small electrical contracting firm, was generally aware of programs to assist with bonding, insurance and financing and other educational and training programs (although it was not clear who offered these programs).

TA #2, the President of the Black Contractor's Association, stated that he is not aware of any outreach efforts by the Consortium to assist businesses by increasing their opportunities and skills to participate in Consortium projects. He stated that he is aware that the Metro Waster Water Treatment Plant may have such a program. TA #2 stated that he has not heard of any programs relating to how to do business with the Consortium.

**Some interviewees were aware of or had participated in outreach programs offered by non-Consortium agencies. (Interviewees #2, 3, 4, 5, 7, 9, 11, 12, 13, 15, 16, 17, 23, 25, 26, 30, 31, 33, 36, 38, 50, 54, TA #1, 2).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he is aware of outreach efforts by the City of San Diego to increase participation of DBEs and small businesses in doing work with the Consortium. He stated that the City sends out emails inviting businesses to attend target events where business owners can learn about on-going projects and pair up with prime contractors. He stated that he last heard of one of these events one year ago. He stated that he attended the event, and it was somewhat helpful, but he thinks that it still comes down to networking with prime contractors.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, was generally aware that some of the agencies have seminars on how to do business with the government entity. For instance, the Metropolitan Water District has a program, but he has never attended a session. The objective of the program is to find out about projects well in advance of when they become public. Interviewee #3 is aware of efforts by the federal government to increase participation of DBEs and small businesses. The Navy Facility Engineering Command has done work to increase participation of DBEs and small businesses. The work involved is all environmental work relating to the base realignment closure. They also developed mentoring programs. The Command also has a mini-racks program in the $5,000 to $10,000 range which was DBE directed, but the program experienced limited success because many of the participating DBEs he believed were DBE fronts.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, was aware of several outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses. For instance, the Path to Partnership program sponsored by the County Water Authority and the State of California Department of General Services, is normally held in September or October of every year. He was also aware that the Minority Supplier Council in San Diego has a similar outreach event once a year. He said there are generally at least three networking events each year in San Diego and some of the individual agencies, such as the Port, may have their own networking event for particular projects.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he is aware of outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses. For instance, he receives the Hispanic News every month and the newspaper advertises different programs including certification programs, but his company does not qualify.

Interviewee #7, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that he is aware of outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses in doing work with Consortium. He stated that an organization called Elite SDVOB provides outreach programs. They generally hold a monthly meeting which members of the Port Authority and PG&E attend. He stated that PTAC also puts on a lot of programs relating to bonding, the Water District, and the Airport.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that L.A. County

has held trade shows in the past with booths where DBEs can come to meet prime contractors; he had knowledge of them doing this at least a couple of years ago.

Interviewee #11, an SBE-certified Caucasian female-owned ergonomic prime consultant in the Los Angeles area stated that she uses the free services offered by the small business development center "all the time."

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he has seen programs to assist with bonding, insurance, and financing, but they do not rely on that. He stated that most of the training programs that he has seen are held by non-Consortium agencies like L.A. County. He was not aware of an outreach program re: "how to do business with the Consortium" although he noted the information may be available on the Consortium websites.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that he is aware of workshops on how to fill out a proposal, but he felt these are not offered by Consortium agencies. Interviewee #13 also stated there are a lot of private companies that "promise to find work" or market for companies for a fee.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, is aware that Caltrans, the City of Los Angeles, and L.A. Public Works have created outreach efforts to increase participation of DBEs and small business doing work with the contractors.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, is only aware of outreach efforts from the SBA with regard to increased participation of DBEs and small business in doing work with the Consortium.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, stated that she is aware of the Governor's initiative for small business to increase participation with the Consortium agencies.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, was aware of the State offering outreach efforts to increase participation of DBEs and small business doing work with the Consortium.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, was aware of an organization called MBOC, or the Minority Business Outreach Counsel, that has an outreach program component.

Interviewee #26, a Hispanic female-owned DBE/WBE/WDBE-certified art consulting firm, was aware of El Camino's outreach programs aimed at increasing participation of DBEs doing work with the Consortium.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, participated in an outreach program offered by Caltrans in the past. He was also aware pf outreach efforts by MWD and LAUSD with the intent of doing business with DBEs and granting them contracts for working with their entities.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, was aware of outreach programs offered by other agencies, but believes that the participants are hand-picked.

Interviewee #36, an African American female-owned DBE/MBE/WBE/SBE/CBE-certified shorthand reporter, was aware of outreach efforts offered by Southern California Edison.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, was aware of outreach efforts offered through his organization, NCAIED.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was aware of outreach efforts by Caltrans and the Department of Defense's Air Force.

Interviewee #54, a Caucasian male owner of a general contracting firm, noted that his own firm offers construction training programs in order to increase opportunities for DBEs and other small businesses.

TA #1, the President of the Latino Business Owners of America, stated that he is aware of sporadic outreach efforts by others (than Consortium) to increase participation of DBEs and small businesses in doing work with Consortium. He stated that occasionally an agency will put on a workshop on how to do business and how to get certified.

TA #2, the President of the Black Contractor's Association, stated that he is aware of a bonding assistance program offered by the Regional Airport Authority. Interviewee TA #2 stated that he is not otherwise familiar with any Consortium programs to assist with bonding, insurance, and financing. Interviewee TA #2 also stated that the San Diego Community College District has a partnership or collaboration with the COC (Contractors Opportunity Committee) to offer educational/training programs, but the program is not offered by the Consortium.

**Other interviewees were not aware of outreach efforts by non-Consortium agencies. (Interviewees #6, 8, 9, 10, 14, 19, 20, 21, 24, 27, 28, 29, 32, 34, 35, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 55, 56, 57, 58, TA #2).** Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, was not aware of outreach efforts by other agencies except to the extent that they require prime contractors to reach out to DBEs to work on projects.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, was not aware of outreach efforts by non-Consortium agencies. She stated that she wanted to know how to do business with large private institutions, but cannot figure out how to break into that market.

**Simplification and streamlining of the bid process**

**Some interviewees were familiar with Consortium efforts to streamline the bid process. (Interviewees #4, 12, 18, 22, 24, 32, 33, 38, 42, 44, 46, 48).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that last year he heard of efforts to simplify and streamline the bidding process, but is not sure what is

involved. Interviewee #4 stated that he could not recall what he heard. Interviewee #4 thinks that a more simplified and streamlined approach would be helpful.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the OCTA "stands out as the agency" that tries to streamline the bidding process through their online system. He stated that they have an online system to request bids from consulting engineers for specific small tasks; this is helpful because you do not have to waste a lot of time putting together a bid, but the process is not transparent and you have no idea how the decision is made.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, has some knowledge of efforts to streamline and simplify the bidding process, but it depends on each individual project.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, had knowledge of Consortium efforts to simplify and streamline the bidding process, but he stated that he is waiting for it to happen.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of efforts by the Consortium to streamline the bidding process.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that at the onset of the project L.A. County MTA will include the bidding aspects.

**Most interviewees had no knowledge of or experience with Consortium efforts to streamline the bidding process. (Interviewees #1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 17, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 39, 40, 41, 43, 45, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, TA #1, 2).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, was not specifically aware of efforts by the Consortium to simplify and streamline the bidding process but did recall that he had read something about it on one of the websites.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not know whether the Consortium has done anything lately to streamline the bidding process. He recalled complaining in the past about the Consortium requirement to have documents notarized. He is "pretty sure" that they have ended the notary requirement.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated the he had "very little" experience with the Consortium efforts to streamline the bidding process.

Interviewee #29, an African American male-owned electrical contractor, was not aware of efforts to simplify or streamline the Consortium bidding process and stated that the process is extremely difficult to understand or to qualify to place a bid.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, indicated that the bidding process is not streamlined.

Interviewee #37, an African American male owner of a SBA certified architecture firm, stated that he has no knowledge of Consortium efforts to simplify and streamline the bidding process. He stated that he wishes it could happen because it would save his firm a lot of time and stress. He stated that he knows he is not going to get every contract, but the sooner he knows whether he will be awarded the contract or will not be awarded the contract he can move on to the next bid.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, was not aware of Consortium efforts to streamline the bidding process but thought that it would be a great idea to implement such a process. He stated that this would help cut back on unnecessary paperwork.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, was not aware of Consortium efforts to streamline and simplify the bidding process, but stated that he wished that they would.

TA #1, the President of the Latino Business Owners of America, stated that he has not heard of any Consortium efforts to simplify and streamline the bidding process, and added he believed that it would make no difference.

TA #2, the President of the Black Contractor's Association, stated that he has not heard of any efforts by the Consortium to simply and streamline the bidding process.

**Segmenting larger contracts into smaller contracts**

**Some interviewees reported knowledge of Consortium efforts to segment larger contracts into smaller ones. (Interviewees #3, 5, 9, 13, 14, 18, 20, 22, 24, 33, TA #1).** Interviewee #3 was aware that in and around 2000 the Consortium tried to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that the Consortium tried to divide the projects up internally instead of giving the entire project to one prime contractor. He said this did not help because the principal work is still done by a limited number of big contracting firms.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business, stated that he recently read something that he may have received from SANDAG regarding Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that many of the agencies are trying to break larger jobs up to bring smaller corporations in. Interviewee #5 stated that this is a good idea. Interviewee #5 stated that he has also heard of another program in which the agencies try to pull resources from the area where a project is being completed. If the contractors are located in particular zip codes, they could receive work on the project. Interviewee #5 stated that he has read about these programs on a number of governmental agency websites.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that he likes when the Consortium segments larger contracts into smaller contracts and "as far as he can tell" the Consortium does try to do this. He stated that when the Consortium does lump a contract together they usually provide a reason for doing so at the pre-proposal meeting.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, stated that L.A. County MTA has "work benches" for prequalification of companies, but he has not received any business from being on a work bench.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that Consortium efforts to segment larger contracts into smaller ones is done for the purpose of controlling workload and not give opportunities to smaller businesses.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, stated she knows that recent projects are being segmented to make more opportunities available for small business — she felt that this was positive.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, was aware of Consortium efforts to segment larger contracts into smaller ones and promote opportunities for smaller contractors. She stated that personally this has been helpful.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, had experience with Consortium efforts to segment larger contracts into smaller ones, and she noted that she helped to write some of the policies.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that she has heard of Consortium efforts to segment larger projects into smaller ones, but she has not seen it in her business.

TA #1, the President of the Latino Business Owners of America, stated that he is aware that the City of San Diego attempted about five years ago to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that segmenting these larger contracts into smaller ones is a key element, but in general thought it might be unhelpful because agencies need to make these contracts realistic for small business owners to participate. The contracts should be more realistic in terms of the scope of services to be provided by small business owners.

**Most interviewees reported having no knowledge of or experience with Consortium efforts to segment larger contracts into smaller ones. (Interviewees #1, 2, 4, 6, 7, 8, 10, 11, 12, 16, 17, 19, 21, 23, 25, 26, 27, 28, 29, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, TA #2).** Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, has not heard of any efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors, but expressed a wish for more agencies to do that.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, did not have much experience with the Consortium agencies segmenting larger contracts into smaller ones. He stated that some people "could say that the on-calls are an attempt to do that" but most of the on-calls — 60-70 percent — translate to no business and create a waste of their time.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, would very much like to see the Consortium segment larger contracts into smaller contracts, but does not know of such efforts.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, has seen Caltrans segment large contracts into smaller contracts, and she would like to see the same happen with the Consortium agencies.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that he had no knowledge of Consortium efforts to segment larger contracts into smaller ones, but stated that the Metropolitan Water District of Southern California does unbundle contracts.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that he was not aware of Consortium efforts to segment larger projects into smaller ones, and sometimes it is the other way — contracts continue to be large and unbundled.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, would like a system in which the Consortium allowed bidding with small businesses where it was actually competitive by making it exclusive to small businesses.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, indicated that the Consortium does not segment larger contracts into smaller ones.

Interviewee #35, an African American female-owned WMBE/MBE-certified management consulting firm, had no experience with the Consortium segmenting large contracts to smaller ones, but believes it would be helpful.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he had never heard of Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors. He stated that he wishes that there was such an effort because of his firm's discipline.

Interviewee #39, an Asian-American female-owned 8(a)-certified architectural firm, stated that in her opinion large firms monopolize the contracts.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, had no knowledge of Consortium efforts to segment larger contracts into smaller ones, but stated that would be fantastic positioning for smaller firms to bid on industry specific contracts.

Interviewee #46, a DBE/SBA/8(a)-certified African American male owner of an energy marketing firm, was not aware of Consortium efforts to segment large contracts into smaller ones, and he stated that they need to do so.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, had no experience with or knowledge of Consortium efforts to segment larger contracts into smaller ones but felt that the Consortium should make this a priority.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that the Consortium has not been proactive in trying to segment larger projects into smaller ones.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, was not aware of Consortium efforts to segment larger contracts into smaller ones, and said he believes that they should do so.

Interviewee #52, a DVBE-certified Caucasian male-owner of a solar contracting firm, had no knowledge of Consortium efforts to segment larger contracts into smaller ones, and stated that he wished that they would do that in the future.

TA #2, the President of the Black Contractor's Association, stated that he has not heard of any Consortium efforts to segment larger contracts into smaller contracts to promote opportunities for small contractors.

**Monitor DBE utilization**

**Most interviewees were not aware of Consortium efforts to monitor DBE utilization throughout a project. (Interviewees #1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 19, 22, 23, 25, 26, 27, 28, 29, 30, 32, 34, 36, 37, 39, 41, 44, 45, 46, 49, 51, 52, 53, 54, 56, 57, 58, TA #1, 2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, had no knowledge as to whether the Consortium visits worksites to monitor DBE utilization.

Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, stated that he does not know whether the Consortium visits work sites to monitor DBE utilization throughout the project.

Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, stated that it is not his experience nor has he ever heard of the Consortium visiting work sites to monitor DBE utilization throughout the project.

Interviewee #4, a DBE-certified Asian-Pacific American male owner of a geotechnical engineering firm in the San Diego area, stated that he has never heard of the Consortium visiting work sites to monitor DBE utilization throughout the project.

Interviewee #5, an employee at a non-DBE Caucasian male-owned electrical engineering business in the San Diego area, stated that he visited Consortium work sites while working for a different employer 10 years ago, however, he could not say whether the Consortium visited work sites to monitor DBE utilization throughout the project.

Interviewee #6, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company in the San Diego area, had no knowledge whether the Consortium visits work sites to monitor DBE utilization throughout the project.

Interviewee #7, a Caucasian male co-owner of a non-DBE Native American and Caucasian owned recycling and materials supplying company, stated that, in his experience, the Consortium does not visit work sites to monitor DBE utilization throughout the project.

Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, did not believe he had ever seen the Consortium visit a worksite to monitor DBE utilization.

Interviewee #10, a DBE-certified African American female-owned accounting firm, did not know whether the Consortium visits worksites to monitor DBE utilization.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, stated that he did not know whether the Consortium visits work sites to monitor DBE utilization.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that he does not have experience with the Consortium visiting worksites to monitor DBE utilization.

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, did not have experience with the Consortium visiting work sites to monitor DBE utilization.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has seen the Consortium conduct labor compliance interviews, but has not experienced visits to work sites to monitor DBE utilization throughout a project.

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, is unaware of the Consortium visiting work sites to monitor utilization — she has only seen the agencies actually involved at the point of proposal, not midstream, but she has seen review and auditing of contracts.

Interviewee #22, an African American female owner of a DBE/MBE-certified planning engineering firm, was not aware of the Consortium visiting work sites to monitor DBE utilization but she knows that they are supposed to.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, was not aware of Consortium efforts to monitor work sites, but stated that the prime contractors should be required to prepare reports on their DBE utilization.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that he is not aware of Consortium visits to work sites in order for them to monitor utilization of DBEs on projects, and he feels that this is something lacking in the Consortium.

Interviewee # 37, an African American male owner of a SBA certified architecture firm, stated that he has never known of the Consortium visiting work sites to monitor DBE utilization. He stated that he thinks it would be a good follow-up.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, was not aware of Consortium efforts to monitor DBE utilization. He stated that this is especially problematic when a prime contractor has subcontracted work to a DBE, but then does not give them the work.

TA #1, the President of the Latino Business Owners of America, stated that he has never heard of the Consortium visiting work sites to monitor DBE utilization.

TA #2, the President of the Black Contractor's Association, has no information whether the Consortium visits work sites to monitor DBE utilization throughout a project.

**A few interviewees were aware of some Consortium efforts to monitor DBE utilization on work sites. (Interviewees #14, 18, 20, 21, 33, 38, 40, 42, 48, 50, 55).** Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, stated that the Consortium does not visit work sites to monitor DBE utilization although procurement will sometimes "keep track" of DBE utilization.

Interviewee #18, a Caucasian female owner of a DBE/WBE-certified transit planning firm, experienced a field visit regarding DBE utilization. L.A. County MTA performed field visits twice in the last decade.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, stated that the Consortium does visit work sites to monitor DBE utilization and she knows that it is hit or miss. She could not speak to how successful this is.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that on her one contract with L.A. County MTA, L.A. County MTA monitored compliance.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, stated that the Consortium rarely visits worksites to monitor DBE utilization.

Interviewee #40, an African American male-owned DBE/MBE/SBE-certified maintenance and supply firm, had experience with the Consortium visiting worksites to monitor DBE utilization, but stated that they should do it more often.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that she had experienced a visit from the Consortium.

**Recommendations related to remedies**

**Several interviewees recommended expansion of outreach efforts to encourage small business participation including: increased advertising and the coordination and notification of work opportunities as between prime contractors and subcontractors. (Interviewees #1, 15, 16, 20, 21, 23, 25, 28, 30, 42, 51, TA #1, 2).** Interviewee #1, a non-DBE Hispanic American male owner of an electrical contracting firm in the San Diego area, suggested blanket advertising of the DBE Program to contractors and offer assistance to small businesses; he stated that that would increase his desire to do work with the Consortium.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, has noticed a significant difference in outreach, and this will continue to help him out tremendously as he continues to bid as a prime contractor.

Interviewee #16, a Hispanic American male owner of a value-added supply and system integration firm, suggested that there are more efforts to bring small and large businesses together, to monitor those efforts, and that such efforts are not just entertained for the purpose of checking a box for a particular bid requirement.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, recommended that the Consortium continue with due diligence for small companies to have opportunities and to not just look to the low bid but to quality as well.

Interviewee #21, an African American female owner of a DBE/MBE/SDB/Hubzone/8(a)-certified marketing and communications firm, stated that most agencies and private companies fail to make appropriate outreach efforts to DBEs. She stated that in order to solve the problem, the agencies and private companies must incorporate a small business set-aside for DBEs similar to the federal government's 8(a) Program.

Interviewee #23, an African American male-owner of a DBE/MBE-certified trucking subcontractor, recommended improved outreach to African American-owned businesses. He believes that other minority-owned businesses are being utilized to the exclusion of African American-owned businesses.

Interviewee #25, an African American male-owned DBE/MBE/SBE-certified civil engineer, stated that there needs to be more partnering between small firms and prime contractors. He stated that there should be more face time with prime contractors in addition to the L.A. County MTA Vendor Fairs.

Interviewee #28, an African American male owner of a DBE/MBE/SBA-certified heavy steel product distribution and supply firm, stated the L.A. County MTA needs to increase awareness and advertising about bidding opportunities, RFPs, and education programs related to bonding and financing.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that there should be a greater push for more outreach to smaller businesses so that they can participate in the bidding process.

Interviewee #42, a DBE/WMBE/SBE-certified African American female owner of a commercial printing company, stated that the L.A. County MTA should offer more DBE outreach programs.

TA #2, the President of the Black Contractor's Association, stated that Caltrans has representatives who provide information about prime contractors who have expressed an interest in a particular RFP; he recommended that the Consortium provide this information. TA #2 also recommended holding workshops in collaboration with the Black Contractors Association and having the Consortium officials and staff introduce themselves and make themselves known so that people know what they do.

**Several interviewees recommended changes to simplify and streamline the bidding process including the provision of more information at the initial stage of the process and the simplification of paperwork. (Interviewees #9, 11, 13, 14, 17, 20, 29, 33, 34, 55, 58).**
Interviewee #9, an Asian-Pacific American male-owned transportation engineering and planning consultant firm and graduate of the DBE Program in the Los Angeles area, stated that usually the first question they ask the Consortium is whether a given project is federally-funded and whether the DBE goals are a firm requirement. He stated that sometimes the answer to that question is unknown even during the pre-proposal meeting; he stated that more knowledge on the part of the agency would be helpful. He stated this information affects the way teams are formed. Interviewee #9 recommended that the agencies provide more information with respect to whether a project is

federally-funded; he stated that federal funding provides them with a "hint" as to whether the contract has a "hard DBE goal" as opposed to a "soft DBE goal" on those contracts without federal funding.

Interviewee #11, an SBE-certified Caucasian female ergonomic prime consultant, recommended making the RFP process easier including requiring "less paperwork."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, noted that "a lot of times" Consortium responses to questions about a particular RFP come too close to the due date of the proposal and raise additional questions that could impact the proposal. He stated that he understands the cut-off for receipt of additional questions but noted that it could affect an individual's ability to respond to a proposal. Interviewee #13 stated that some RFPs have page limitations which can be detrimental. Interviewee #13 also stated that some RFPs do not provide evaluation weighting information.

Interviewee #14, a Latin American male owner of a DBE-certified marketing firm, recommended that the people drafting the RFPs should be more qualified in the particular field. He stated that often the RFPs are written for engineering companies and then modified or tailored for communications projects but they retain qualifications that are "ridiculous" and not applicable (e.g. an insurance requirement).

Interviewee #17, a Subcontinent Asian American female owner of a MBE/DBE/WBE-certified engineering management firm, reported that her recommendations deal more with the delivery side of the process. Interviewee #17 stated that there is a disconnect between prime consultants and agency managers. Interviewee #17 recommended that agencies do a better job of "in-reach" to hold personnel accountable with regard to the commitments made during the proposal and planning stages of job and team formation.

Interviewee #20, an African American female owner of a DBE/MBE/WBE/SBA-certified community outreach firm, recommended that the Consortium cut down on the amount of paperwork associated with the bidding process. She stated that there are a lot of redundant forms that ask questions regarding, for example, lobbying, childcare facilities, etc. which often must be resubmitted twenty (20) times a year. She stated that there should be one form that captures all of the information so that they only have to go through the process once a year.

Interviewee #29, an African American male-owned electrical contractor, recommended that the Consortium make the process small business-friendly. He suggested streamlining efforts to make it easier to understand the proposals as well as the qualifications for the proposals and making them obtainable goals. He would like the certification process to be simplified. He stated that if the government really wanted to help small businesses they would have a checks and balances system in place for businesses who are supposed to get a percentage of the dollars to actually get the dollars.

Interviewee #33, a Caucasian female-owned DBE/WBE/SBA-certified management consultant, recommended that the Consortium reduce the number of addendums to the RFPs which would simplify the process.

Interviewee #34, a Hispanic female-owned DBE/MBE/WBE-certified transit and labor consultant, recommended eliminating bureaucratic hurdles in the bidding process.

Interviewee #55, a representative from a Caucasian male-owned large construction services and program management firm, stated that the Consortium should re-write the parameters in the proposals.

Interviewee #58, a Caucasian male owner of an engineering consulting firm, indicated that it may take a Consortium member agency one year to put together an RFP, but when it is released they will request a response within two weeks. He noted that sometimes the deadlines conflict with national holidays, and he offered that the agencies could be more considerate of the timing.

**Several interviewees recommended that the Consortium unbundle, and segment larger contracts into smaller ones in order to increase opportunities for small businesses. (Interviewees #2, 15, 30, 31, 32, 38, 43, 50, 53).** Interviewee #2, a DBE-certified African American male structural engineer in the San Diego area, recommended that the Consortium break larger contracts into smaller ones.

Interviewee #15, a Hispanic American male owner of a MBE-certified engineering and construction company, recommended that the bidding process reflect the breaking down of contracts into smaller segments. Interviewee #15 noted that the bidding process and the contracts are, themselves, too big. He said that he would like to see contracts broken down into more management segments so that companies his size can bid on more projects.

Interviewee #30, an Asian male MBE/SBE-certified owner of a construction management firm, stated that the Consortium should divide larger contracts and split them down into smaller contracts so that the smaller firms can become more competitive for contracts; this will also do a better job of ensuring more minority and small business participation in becoming prime contractors and dealing directly with the Consortium.

Interviewee #31, an African American male-owned DBE/MBE/SBE-certified masonry subcontractor, stated that he thinks it would be a great idea for small businesses to be able to negotiate directly with the Consortium as it relates to the bidding process. Also he thinks that there should be some sort of system in place that breaks down the requirements of projects so that a $10 million project which might have $200,000 worth of masonry can be bid out in smaller portions (which is what he would want to bid on). He stated that he can never be the prime contractor on that type of project or be able to bond for a $10 million project but if he's bidding on a $200,000 project he becomes more competitive.

Interviewee #32, an African American male owned DBE-certified distributor of cleaning products, stated the Consortium should enable smaller companies to obtain smaller contracts so that they can establish a track record with a prime contractor which could lead them to getting larger contracts.

Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the structures of the contracts should be unbundled allowing more specialized bidding. This will allow bidders to bid within their own scope of work; he stated that some of the RFPs have you locked in a crazy perimeter of work. He also said they should make it fair and closely monitor the "good ol' boy" network.

Interviewee #43, a DBE/MBE/SBE-certified African American male owner of a security firm, stated that the Consortium should develop a system that allows small businesses to be truly competitive on the bidding process; this would include some form of segmenting larger contracts into smaller ones.

Interviewee #50, a MBE/SBE-certified Chinese American male owner of an accounting firm, stated that the awarding entity should unbundle the contract so that smaller businesses have an opportunity to bid. He stated the Consortium should stop consolidating the contracts into one large all-inclusive contract that may, due to the scope of work and price, diminish the chance of a small business to be awarded the contract.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, stated that some of the Consortium projects are too large and they are always awarded to the larger firms. He recommended that the Consortium make the contracts smaller so that a firm can realistically go after it and do the job.

**Some interviewees recommended the Consortium take efforts to encourage growth of small businesses. (Interviewees #3, 27, 47, 55, TA #1).** Interviewee #3, a non-DBE Caucasian male-owner of an environmental services company in the San Diego area, made the following recommendations for improvement to the Consortium DBE Program: spend an adequate amount of money to encourage participation. For instance, spend money to allow prime contractors to mentor and work with DBEs who may be less experienced.

Interviewee #27, a Chinese American male owner of a DBE/MBE-certified structural engineering firm, stated that it has been more difficult to obtain business since the passage of Proposition 209. He stated that as a result he has been forced to market in other areas. He stated that since his firm is not a small business, nor a large one, he needs another stream of dependable work. He said that the Consortium should help small businesses become larger businesses so that they do not remain stagnated in the small business category.

Interviewee #47, a DBE/MBE/8(a)-certified African American male owner of a security firm, stated that small businesses should have the same opportunities as larger companies and the Consortium should give small companies a chance so that they can grow. He stated that if they continue to give all of the jobs to the large companies the small companies will never have the opportunity to compete. He stated that L.A. County MTA will not award a contract to a small company if it deems it to have insufficient experience or annual revenue; and, he stated the L.A. County MTA will automatically assume that to be the case if it is a small business as all of them are placed in the same category. He stated that this is a bad business model. He stated that jobs are hard to finance and it seems as though the rules are set in place to eliminate businesses as opposed to assisting them. He indicated that he has pursued the same contract year after year, but it always goes to the incumbent; it has become a waste of time and money.

Interviewee #55, a Caucasian male owner of a construction services and program management firm, recommended that the Consortium find a way that comports with Proposition 209 to enable small and minority-owned firms to obtain work.

TA #1, the President of the Latino Business Owners of America, stated the agencies should also work to create stepping stones to grow small businesses. Further, he stated that the Consortium needs to change the perception that there is no gain to doing business with Consortium agencies and that the

agencies are open to working with small businesses. TA #1 recommended that the agencies should go back to the drawing board and change the way that they do business. He stated that the contracts should be realistic in terms of the scope of work made available to DBEs. He also suggested that the agencies focus more on growing small businesses. He stated that unless the agencies help grow small businesses, all of the project supplies, for instance, will be imported.

**Some interviewees recommended relaxation of the participation goals in certain instances and expansion of other opportunities for small businesses. (Interviewee TA#1, #1, 53).** TA #1, the President of the Latino Business Owners of America, recommended that the Consortium make realistic participation goals for small businesses. The allocation of contract dollars has to be realistic in terms of availability of DBEs. If there is no availability of DBEs in a particular area, the program should be focusing on creating availability. Additionally, the agencies often want to deal exclusively with one vendor who can supply multiple products, which excludes smaller vendors. The agencies should alter their practice of hiring a one source vendor to include smaller vendors.

Interviewee #53, a Caucasian male owner of a traffic, transportation, and engineering consulting firm, stated that he does not believe that any group should be forced to use a particular group because of their size, race, or gender; rather, everything should be left up to a firm's work history.

**Recommendations related to DBE programs**

**Some interviewees recommended that the Consortium avoid eliminating race-conscious participation goals. (Interviewees #12, 13, 19, 48, 49).** Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that the Consortium should be "consistent" in its implementation of the DBE Program and "not do what Caltrans did. . ." He stated that Caltrans "went race-neutral" and left the local agencies to "do whatever they please . . . and to ignore DBE participation, if necessary, because they have something lined up for someone." He stated that they had a direct experience with a local panel who told them that DBE was not that important. He stated that the Consortium should continue equal treatment of all DBEs. He stated that Caltrans did not take demographics into effect and the fact that there are more Hispanic Americans in the southern California area. He stated that limiting the DBE Program to certain races would be a "mistake."

Interviewee #13, an Asian-Pacific American male owner of a DBE/SBA/SBE-certified engineering consulting firm, noted that many projects today do not have a DBE requirement, but rather just encourage participation. He stated that in many instances that is reasonable because there are not DBEs that do that kind of work. Interviewee #13 stated that opportunities for DBEs are shrinking and many states have done away with the DBE Program altogether, which is "bad" for his ability to get work. Interviewee #13 stated that he understands why states are curtailing the DBE Program, but he does see value to the DBE Program too. He stated that in the "big picture," he does not know whether the DBE Program is good or bad, but it has certainly helped his company to survive. He stated that his company has done some great work for the Consortium so both he and the Consortium have benefited.

Interviewee #19, an MBE-certified African American male attorney, stated "the playing field should be leveled" where the minority law firms can fairly compete for business and for more desirable business.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, recommended that the Consortium bring back the requirement for the utilization of DBE and MBE firms that was in existence before Proposition 209. He stated that once the Consortium eliminated the requirements in favor of goals, his telephone stopped ringing for new work. He stated that the L.A. County MTA had one of the strongest programs, and he hopes that they would return to that in the future.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, stated that Consortium contracts should no longer be race-neutral and should require utilization of minority-owned firms.

**One interviewee recommended that the Consortium should be sure to update its programs to keep them current with the state of business operations. (Interviewee #54).**

**Some interviewees offered mixed perceptions regarding continuing the Consortium DBE Program.** Interviewee #8, a Caucasian male owner of an environmental consulting firm in the San Diego area, stated that he "resents" the DBE Program and having to comply with it. He stated that on non-Consortium projects a DBE requirement will sometimes be the deciding factor as to whether he decides to bid on the project. Interviewee #8 stated that the DBE Program is a time-consuming added requirement.

Interviewee #12, a Hispanic male owner of a DBE/MBE-certified civil engineering firm, stated that based on his experience with LA County MTA and OCTA, he did not have any recommendations for improving the DBE Program "provided that it continues to exist." He stated that the Caltrans process has led to some confusion and disadvantage.

**Some interviewees recommended that the Consortium return to mandatory DBE goals.** Interviewee #38, a Native American male-owned DBE/MBE/SBE-certified closed circuit television and surveillance security business, stated that the Consortium should return to the time when the goals were mandatory and were strictly enforced. He stated that they should level the playing field where public money is spent as it relates to small businesses involvement. He recommended making the project distribution fair by allowing all qualifying firms to become part of the bidding process.

Interviewee #48, a DBE/MBE-certified African American male owner of an electrical contracting firm, indicated that prior to the passage of Proposition 209, 85 percent of his business was attributable to his DBE certification; now it is less than 1 percent. He stated that he would like the certification to mean something.

Interviewee #49, a MBE/SCRPC-certified African American male owner of a job training firm, recommended that the Consortium have an initiative based on ethnic status. He feels as though this would help fight discrimination.

### B. SDCRAA anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

**Outreach programs**

**Many interviewees had positive or neutral opinions about public agencies hosting outreach programs.** Interviewee #SD20, representing an Asian American male-owned firm, stated that agency outreach programs are very useful for minority- and female-owned firms. He went on to say and that the Airport does a good job with such programs. Interviewee #SD21, representing a Caucasian male-owned firm, said that he believes that agency outreach programs are helpful to small firms (including MBEs/WBEs).

Interviewee #SD25, representing a Caucasian male-owned firm, said that networking opportunities are crucial for small firms in order to establish themselves. He went on to say that the networking events that the Airport has hosted have been very useful.

Interviewee #SD28, representing a Caucasian female-owned firm, indicated that she thinks that outreach programs are one of the most effective remedies that agencies can implement. She said that it gives small firms an opportunity to network with and learn about prime contractors in the area and vice versa.

Interviewee #SD30, representing an African American male-owned firm, indicated that he supports agency outreach events, particularly if the prime contractors that are invited to those events have "a proven track record of actually using [MBE/WBE] firms."

Interviewee #SD31, representing a Caucasian male-owned firm, indicated that outreach events are quite beneficial to small firms that are trying to develop relationships and make contacts with public agencies and prime contractors: "It's all about access, and anything that gives me access [to the decision makers] is good."

Interviewee #SD43, representing a Hispanic male-owned firm, reported that the Small Business Administration has helpful programs in place for small businesses, particularly as it relates to learning about work: "… [As a result of the SBA's efforts] we see a lot of the jobs that maybe we wouldn't see through E-Bid board or … Bluebook … and they're small, more local jobs. And what they'll do — maybe two or three times a week sometimes — they'll send us emails just [listing] all the small jobs and requesting subs."

SDTA #3, representing a local chamber of commerce, indicated that outreach events are very helpful for MBE and WBE firms, and that she is aware of the Airport having hosted such events in the past. She said that if public agencies informed her organization about outreach events, then her organization would disseminate that information to its members: "If they let us know, we'll email [that information] out."

SDTA #11, representing a veterans trade organization, said that agency outreach is very useful in helping disadvantaged firms and indicated that the Airport is doing its part in hosting such events: "The Airport is the only one trying to do anything." He continued, "The people running the Airport and the outreach programs are wanting to help. …"

SDTA #7, representing a construction trade organization, stated that the Airport does a good job with its outreach programs. He explained that such programs "allow everyone to see what's available and what kind of project it is and what kind of subcontracting opportunities there will be." He added

that advance notice about projects does not substantially help contractors in the public sector but does help in the private sector.

SDTA #6, representing an Asian American trade organization, indicated that outreach programs would be very helpful for small firms (including MBEs/WBEs). She went on to list a number of things that an agency should do in order to have a successful outreach program, including: informing organizations about the types of projects for which they need vendors, identify ways in which they can better assist small firms, and host an event for small firms to inform them about what projects are available.

SDTA #4, representing a local chamber of commerce, stated that informational workshops are some of the most useful tools to increase awareness of contracting opportunities. She said that she would like to see representatives from the Airport attend those workshops to provide insight to potential bidders.

SDTA #2, representing a Hispanic American trade organization, indicated that his organization has entered into agreements with various public agencies to host outreach events. Those events are intended to increase contracting opportunities for small and emerging firms.

SDTA #9, representing a public works trade organization, discussed local public agencies' outreach events for small and disadvantaged businesses. Overall, he indicated that whereas some outreach efforts are disappointing, others have been quite effective: "The best [agency outreach events] give access to decision makers, and the ones that don't work [have] one per year and no follow up information. Unsuccessful efforts include connecting businesses with those who don't have [the] ability to make decisions."

**Other interviewees had negative opinions about public agencies hosting outreach programs.** Interviewee #SD2, representing a Caucasian female-owned firm, indicated that outreach programs are not very effective: "There is not any substance to outreach events." She said that local agencies should list all of their available contracts in one, centralized location: "There needs to be a clearinghouse."

Consistent with those comments, SDTA #9, representing a public works trade organization, said, "No matter how good the agency is, it is hard for subs and small businesses to get all information and opportunities from them." He said that he would like his organization and other, similar organizations to act as a clearing house for public agencies to make it easier for local small business to learn about available work.

Interviewee #SD14, representing a Hispanic American male-owned firm, said that he has attended a number of events hosted by different public agencies and believes that they are not effective, because without mandatory goals agencies are only concerned with finding the low bidder — networking cannot change that.

Interviewee #SD34, representing a Caucasian male-owned firm, indicated that he does not consider agency outreach as important to the success of his firm: "[Agency outreach] doesn't matter — it's not how I get business."

Interviewee #SD43, representing a Hispanic male-owned firm, reported that she has attended outreach events at the Airport and that the Airport staff provided a great deal of information, but that they were not very helpful on an individual basis: "For example, they had different people speaking about different things all at one time …. But they didn't give you enough information as to where you felt like you can actually be part of it or get started …. It was just … general information about different subjects."

Interviewee #SD43 went on to say that she has noticed that most of the people attending the Airport's events know each other. That is, the prime contractors that attend the events seem to have developed relationships with the Airport staff.

Interviewee #SD46, representing an African American male-owned firm, indicated that outreach events do not help MBE/WBE firms get contracts: "[Outreach events] look good on the outside, but actually gaining a project from those … [the potential] is nil." He continued, "The bad part is that if you have a business starting out, or a business that is trying to maintain, they are hopeful when they attend those gatherings, but it's a lot of talk, it's a lot of hype. You don't even hear back from those vendors."

SDTA #1, representing a local chamber of commerce, said that outreach programs could be effective in principle, but in practice the marketing of those events have been quite poor. He said, "My impression would be that turn out would be relatively low [for such events]." He went on to say that agencies need to make sure that they get the attention of those companies that would most benefit from outreach programs, and try to ensure that those companies attend the events.

SDTA #10, representing a supplier trade organization, stated that public agencies are too focused on outreach and not focused enough on tangible results.

**Educational, training, and technical skills programs**

**Several interviewees had positive or neutral opinions about educational, training, and technical skills programs aimed at small firms.** Interviewee #SD21, representing a Caucasian male-owned firm, stated that technical assistance programs are very helpful to minority- and female-owned firms. However, he would like to see unions "expand their training horizons." That is, he believes that unions should establish broader training programs for their members rather than leaving it up to individual agencies.

Interviewee #SD5, representing an African American male-owned firm, stated that a large construction firm hosts a 14-week training seminar at the Airport that he described as being very helpful. In addition, Interviewee #SD5 attends seminars with various public agencies to gather information and develop relationships with members of the certification and bonding communities.

Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that technical assistance programs would be helpful for firms that are just starting out, particularly in making new contacts. He went on to say that on-the-job training programs would also be helpful for those firms, but that such programs are not very practical in the current economy.

Interviewee #SD19, representing a Caucasian male-owned firm, indicated that although technical assistance programs would not help her firm (because it is well-established and she has a great deal of

experience), they would be particularly useful for less established firms: "If you are just starting out, this might be good."

Interviewee #SD33, representing a Hispanic American male-owned firm, indicated that technical assistance is necessary for small firms, because they may find contracting specifications and procedures overwhelming. He said, "If [public agencies] break it down and walk through it, it is helpful."

Interviewee #SD40, representing a Caucasian male-owned firm, reported that his firm offers free classes to small firms that teach them a broad range of business skills, including scheduling, bidding, and project management.

Interviewee #SD47, representing an African American female-owned firm, stated that technical assistance and training programs are vital to the success of small firms, because they cannot afford internal training programs: "People don't have any money for training …."

SDTA #1, representing a local chamber of commerce, indicated that he supports the idea of technical assistance programs and on-the-job training programs, but expressed concern about firms actually attending them. He also said that he is unaware of public agencies in San Diego implementing such programs.

SDTA #7, representing a construction trade organization, said that his organization hosts construction training classes that members and nonmembers are welcome to attend. He said, "I think we are the main training facility for this area and probably part of LA too.

SDTA #10, representing a supplier trade organization, stated that he and his staff spend at least 25 percent of their time providing technical assistance to suppliers.

**Other interviewees had negative opinions about educational, training, and technical skills programs aimed at small firms.** Interviewee #SD2, representing a Caucasian female-owned firm, reported that public agencies spend a lot of money on technical assistance, but most of that assistance is at a very basic level. She said that classes at that level can hurt small firms more than they can help. She said that technical programs can be improved if "actual contractors that do actual work" teach the classes.

SDTA #10, representing a supplier trade organization, reported that not all technical programs are useful: "There are tons of technical assistance programs, but not all are good or useful." He went on to say that public agencies do not do a good job of identifying the useful programs and eliminating the bad ones: "There seems to be a willingness to simply perpetuate the programs with a focus on systems and processes, but with no attention given to the bottom line or a return."

Interviewee #SD20, representing an Asian American male-owned firm, said about his own firm: "We don't really need [technical assistance]." He also indicated that technical assistance programs would be a great deal of work for public agencies, rendering them impractical.

Interviewee #SD10, representing an African American male-owned firm, stated that the resources spent on technical assistance programs are better spent in other areas: "I am too jaded in this industry

and this city to think that technical assistance works. I need help making sure I am getting the work that is promised to me."

SDTA #11, representing a veterans trade organization, indicated that he did not think that technical assistance programs were particularly useful. One pitfall that SDTA #11 pointed out about those programs was that they were too short to be productive, "When you're going to talk about bonding, don't give it a 15 minute time frame." He also said that he would prefer if agencies spent time educating their own procurement people on the needs of local small businesses.

SDTA #5, representing a government advisory commission on minority issues, reported that she considers a particular trade association's mentoring program to be a complete failure: "The … mentoring program … is a failure I believe. It is nice that they have it, but when you have a program that is seven years old and graduated only four people I don't know how you consider that a success."

**Assistance with financing, bonding, and insurance**

**Many airport interviewees had positive or neutral opinions about programs aimed at assisting small firms with financing, bonding, and insurance.** Interviewee #SD14, representing a Hispanic American male-owned firm, said that finance and bonding programs would be very useful for MBE and WBE firms, particularly for small firms that are not well established. However, he indicated that he has never heard of any such programs being implemented in San Diego and would not know how to get information about them.

Interviewee #SD21, representing a Caucasian male-owned firm, indicated that programs aimed at providing financing and bonding assistance would be very helpful to MBE/WBE firms. He said that he is aware of a bond guarantee program through the Small Business Association (SBA), but did not share any opinions about it. He noted that bond waivers are not a reasonable expectation for public agency work.

Interviewee #SD20, representing an Asian American male-owned firm, indicated that financing and bonding programs would definitely help small firms (including MBE/WBE firms). With regard to financing, Interviewee #SD20 said that he would also like to see some sort of program or policy by which the prime contractor is required to pay its sub contractors in a timely fashion.

Interviewee #SD30, representing an African American male-owned firm, reported that financial assistance would be very helpful to small firms, including MBE/WBE firms. Regarding the importance of a firm having its finances in order, he said, "A large firm — particularly in the public sector — wants to see that you are handling your financials properly." He went on to suggest that public agencies should help small firms by lending them money upfront for startup costs on projects.

Interviewee #SD31, representing a Caucasian male-owned firm, said that bonding is absolutely the biggest hurdle that firms face in construction and any programs that help firms with bonding would be beneficial. Specifically, he indicated his preference for bond waivers rather than bond guarantees: "Bond waivers are better than bond guarantees, because in the end you still have to find someone … to put up the money [with bond guarantees]."

Interviewee #SD47, representing an African American female-owned firm, said that trade associations, particularly those representing minority- and female-owned firms, should spend more

time developing relationships with financial institutions and surety companies on behalf of their members: "Instead of forming alliances with people who don't mean minority contractors any good, [trade associations should] form those alliances with surety companies, insurance companies, CPA's, accountants and bookkeepers."

Interviewee #SD47 went on to say that current bonding programs can be helpful but are inaccessible to most of the firms that need them: "I had to go all the way to Washington [to get bonding assistance … the average person will give up — I think [finane and bonding programs] are designed that way."

SDTA #8, representing an electrical workers trade organization, indicated that the Airport's bonding program is a "wonderful" program. She said that bonding is one of the biggest obstacles for small firms that are not well established. She also said that her organization's members value the Airport's bonding program — they believe that it significantly helps their employees.

SDTA #6, representing an Asian American trade organization, reported that it would be particularly helpful if the Airport developed programs to assist small firms with bonding. She went on to say that her organization would like to provide members with bonding assistance, but that they currently do not have the capacity to do so.

SDTA #11, representing a veterans trade organization, indicated that programs aimed at assisting small firms with financing and bonding are worthwhile programs. He noted that some bonding assistance is currently available for small firms through the Small Business Administration, but that many firms are not aware of it. He said that for financing and bonding programs to be effective, financial institutions and disadvantaged businesses need to be educated on them.

SDTA #3, representing a local chamber of commerce, indicated that financing programs would certainly be useful to minority- and female-owned firms, particularly given the current state of the economy and how difficult financing can be for a new business. She said, "the first three years when you start a business [are] your most difficult. …" She said finance programs would encourage businesses to open and to compete. SDTA #3 indicated that bonding assistance would also be beneficial to MBE/WBE firms.

SDTA #7, representing a construction trade organization, said that financing assistance would certainly be helpful for small firms (including MBE/WBE firms), but that he does not think that banks would agree to such arrangements, because "they don't care what color [the contractors are] — they just look at the numbers."

SDTA #1, representing a local chamber of commerce, stated that both financing and bonding assistance would be very helpful to minority- and female-owned firms as well as to other small firms in San Diego.

**One Interviewee reported that the SBA's bonding program is not helpful.** Interviewee #SD2, representing a Caucasian female-owned firm, indicated that the SBA's bonding assistance is not very useful for small firms: When asked why not, she replied, "There is so much BS to it."

**Simplification and streamlining of the bid process**

**A few interviewees reported that they would like to see public agencies simplify and streamline their bid processes.** Interviewee #SD28, representing a Caucasian female-owned firm, indicated that changes in bid procedures would help all firms, not just small firms or DBE firms. He thinks that public agencies in San Diego need to work together to make their bid procedures more consistent and uniform.

Similarly, Interviewee #SD31, representing a Caucasian male-owned firm, said that in principle streamlining bid procedures would be helpful, but it would be difficult to do in practice because "every agency's [bid] procedures are different." Interviewee #SD31 said that it would be helpful to make bid procedures uniform across agencies if they were "put together by competent people."

SDTA #11, representing a veterans trade organization, said that there was too much paperwork and hassle associated with bidding on public sector projects, particularly with the Airport. He indicated that he supported measures to simplify the bid process.

SDTA #1, representing a local chamber of commerce, indicated that streamlining the bid process would be very useful in helping firms better understand available bid opportunities. Similarly, Interviewee #SD21, representing a Caucasian male-owned firm, said that streamlining the bid process would be very helpful to minority- and female-owned firms.

**Other interviewees expressed concerns about how bid processes would be simplified and whether it would be beneficial.** Interviewee #SD14, representing a Hispanic American male-owned firm, indicated that he does not want to see any changes in bid procedures: "I think you have to keep the bidding procedures like they are." He said that he believes that the bid process as it is ensures that available contracts go to qualified contractors.

Interviewee #SD30, representing an African American male-owned firm, indicated that he would be hesitant to simplify bid procedures. He would rather see more outreach and training related to bid procedures rather than seeing them change in any way. He went on to say that that he would like see agencies' estimating procedures become more transparent to bidders: "One process I would like to see changed is … the engineer's estimate …. I really don't think it's accurate, and I think it handcuffs … the prime from the get go."

Interviewee #SD32, representing an African American male-owned firm, said that streamlining bid procedures could be problematic, because certain aspects of them are necessary to ensure that the best contractors win projects: "I think certain requirements are necessary in order to … [separate] the good contractors from the bad contractors."

Interviewee #SD20, representing an Asian American male-owned firm, stated that, in theory, streamlined bid procedures would help small, less established firms, but he thinks that all aspects of the current bid process seems necessary. He expressed concerns about what the agencies would eliminate.

SDTA #3, representing a local chamber of commerce, reported that she preferred that public agencies provide more information to potential bidders about the current bid procedures rather than change those procedures in any way.

**Segmenting larger contracts into smaller contracts**

**Many interviewees reported that segmenting large contracts into smaller pieces would help smaller firms.** Interviewee #SD2, representing a Caucasian female-owned firm, reported that breaking contracts down into smaller pieces is important to helping minority- and female-owned firms: "Breaking up jobs would be a good thing." She went on to say that having large contracts does not save public agencies money, as many of them think: "You pay so much for different levels of construction managers [on large contracts] …. You also get more competition with smaller jobs." Interviewee #SD2 said that although many local firms prefer smaller contracts, public contracts appear to be getting larger.

Consistent with those comments, Interviewee #SD21, representing a Caucasian male-owned firm, reported that although breaking up contracts would be helpful to small firms (including MBE/WBEs), The Airport has been moving away from that measure. He said, "The Airport has gone just the opposite way [recently]. They've been lumping [contracts] together."

Interviewee #SD20, representing an Asian American male-owned firm, agreed that breaking up large contracts into smaller pieces would help minority- and female-owned firms: "That would help [DBEs and small firms]."

Interviewee #SD16, representing an African American male-owned firm, indicated that breaking up large contracts would greatly help his firm: "Let's put it like this, babies can't eat meat, right? Well businesses like mine can't take million dollar contracts." He said that the main issue for small firms is that they lack the capital to take on bigger projects.

Interviewee #SD28, representing a Caucasian female-owned firm, reported that segmenting large contracts into smaller pieces would help both prime contractors and subcontractors in San Diego: "The Airport was going to have … contracts in big units, and that would have meant companies from out of state that were … specialized in [that type of work] would be coming in to do them, and it would have been less work for the people here in San Diego, but [the Airport] broke [the contracts apart] …."

Interviewee #SD30, representing an African American male-owned firm, said that "without a doubt" public agencies should break up large contracts into smaller pieces to make them accessible to small firms. He gave the example of a new federal courthouse that is going up in the city: "It's easily $10 million — just the electrical — but they would list that $10 million job as a small business [opportunity]. Come on now — I think they [must] look at me as a tiny business, not a small business."

Interviewee #SD31, representing a Caucasian male-owned firm, indicated that he supports breaking up large contacts into smaller pieces: "The smaller the [contract] pieces, the easier it is to qualify for a particular piece. In other words, someone might be willing to give me a $2 million job, but are they going to give me a $50 million job?"

Interviewee #SD40, representing a Caucasian male-owned firm, reported that his subcontracts work out in small pieces to allow small firms the opportunity to bid on them. He indicated that segmenting contracts in that way creates more work for his firm, but that it is important to allow small, local firms the opportunity to compete: "We are creating work for the local community. What

we do is try to create work that fits the local market. We will package work so smaller companies can compete, so they can get the insurance and the bonding. The benefit is that we get to keep as much work local as possible and grow the companies in our local market."

Interviewee #SD40 continued, "For DBEs, I think the biggest challenge is that if the work is not packaged in the right way disadvantaged firms are forced to be excluded. I think that we need to know what the requirements are and not set the bar so high so they can participate. It is sometimes more work for general contractors, but the benefit goes to the client."

Interviewee #SD43, representing a Hispanic male-owned firm, stated that segmenting large contracts into smaller pieces would go a long way in encouraging MBE/WBE participation because it would (1) make those contracts more affordable for small firms; and (2) make it so multiple small firms could participate on one project rather than having it go to a single large firm.

Interviewee #SD47, representing an African American female-owned firm, indicated that the construction industry's standard for "small" contracts is about $30 million, an amount that precludes most small firms and MBE/WBE firms from competing for them. She indicated that there needs to be more small contracting opportunities but that they do not exist because bundling contracts together is "easier for [agencies]."

SDTA #2, representing a Hispanic American trade organization, stated that breaking up large contracts would greatly benefit minority- and female-owned firms. He said, "We should be [breaking up large contracts so] most contractors [can] compete, instead of having one Goliath get all of the profits."

SDTA #6, representing an Asian American trade organization, reported that her organization's membership would strongly prefer that public agencies break large contracts into smaller pieces. She explained that an appropriate project size for her membership could be as low as $10,000.

SDTA #7, representing a construction trade organization, reported that breaking up large contracts would definitely help small firms. However, he pointed out that breaking up large contracts involves a great deal of coordination and planning on the part of the agency.

SDTA #5, representing a government advisory commission on minority issues, indicated that she played a role in segmenting large contracts when she used to work for a government agency and that those efforts were quite beneficial to small firms, particularly minority- and female-owned ones: "We had one man who provided all of our paper needs because of the way the contract was bundled. With such a large contract, the only way to do it was to have one large company fill the request. You get the same person every time. [After segmenting the contract], we ended up with people who did cups and another did bathrooms — smaller companies were able to work for [the agency]. Breaking up the RFP was successful and resulted in a more diverse pool of people doing business with us."

Interviewee #SD38, representing a Hispanic male-owned firm, indicated that he supports efforts to segment large contracts into smaller pieces: "I like the idea of breaking up larger contracts for smaller jobs. I think that is a smart way of doing it. It will also keep people on their toes and keep general contractors on top of the job. Also, your bracket for the workers grows."

**A few interviewees expressed concern that breaking up large contracts would result in public agencies losing "economy of scale."** Interviewee #SD14, representing a Hispanic American male-owned firm, said that breaking up large contracts into smaller pieces would help small firms, particularly with bonding, "For small businesses that can't bond $20 million contracts, [they] could bond $4 or $5 million contracts." However, he expressed concerns about agencies' and prime contractors' willingness to break up contracts, because it is cheaper for them to award one large contract than several smaller ones.

SDTA #1, representing a local chamber of commerce, expressed a similar concern. Although he agreed that breaking up large contracts would be helpful to MBE/WBE firms, he reported that agencies would be reluctant to do it, because they would lose "economy of scale."

SDTA #3, representing a local chamber of commerce, also expressed concerns about losing "economy of scale" if public agencies were to break up large contracts into smaller pieces. She went on to say that large contractors effectively break up contracts on their own anyway by subbing out pieces of a project.

**Price/Evaluation preferences**

**A few airport interviewees indicated that they supported price or evaluation preferences for MBE/WBE firms.** Interviewee #SD14, representing a Hispanic American male-owned firm, stated that price preferences would definitely be helpful for MBE and WBE firms, but that he was only familiar with those programs as they relate to small business enterprises.

Similarly, Interviewee #SD20, representing an Asian American male-owned firm, and SDTA #2, representing a Hispanic American trade organization, both indicated that price and evaluation preferences would definitely be helpful to minority- and female-owned firms.

Interviewee #SD32, representing an African American male-owned firm, remarked that price and evaluation preferences seem to be a "good deal" for DBE firms, but not necessarily a good deal for the majority-owned firms that have to compete with them.

**Other airport interviewees said that they did not support price or evaluation preferences for MBE/WBE firms.** SDTA #11, representing a veterans trade organization, stated that price preferences generally do not work and that agencies should be concerned with best value and not lowest price.

SDTA #1, representing a local chamber of commerce, said that price and evaluation preferences sound helpful for MBE and WBE firms, but he is concerned that majority-owned firms may feel disadvantaged or discriminated against.

SDTA #3, representing a local chamber of commerce, indicated that she did not support the idea of price and evaluation preferences, "I don't like crutches where you bid other people out of business … [Agencies] should go with the best quality work."

**Recommendations related to remedies**

**Some interviewees recommended that public agencies engage in more outreach efforts.** Interviewee #SD4, representing a Caucasian male-owned firm, suggested that public agencies should have an open forum for MBE and WBE firms and ask them, "How can I help you?" Particular to the Airport, Interviewee #SD4 said that he would like to see Airport inspectors be more helpful and less combative with regard to MBE/WBE regulations.

Interviewee #SD16, representing an African American male-owned firm, stated that public agencies need to reach out more to minority- and female-owned firms: "Reaching out to those who have been outside of the playing field for so long because of race, age or gender is important. Public agencies should be more aggressive about attacking social ills and we could be more effective in developing a remedy."

Interviewee #SD30, representing an African American male-owned firm, stated that small firms are not as big of a part of the San Diego contracting industry as they should be: "I don't think it's a level playing field, because small businesses or the new start up guys are not necessarily in the loop." He said to improve the situation, public agencies need to focus on disseminating more information to small firms and need to do more outreach to help small firms be aware of work opportunities.

Interviewee #SD43, representing a Hispanic male-owned firm, suggested that the Airport should allow small firms to interview one-on-one with Airport staff, because she thinks that the Airport's current outreach events are inaccessible to small firms: "When there's so many people [at outreach events] and it's so overwhelming, they're not taking your company into consideration in particular. It's very difficult."

SDTA #3, representing a local chamber of commerce, suggested that public agencies should do more to ensure that potential bidders are informed about available projects and remedial programs. Particular to the Airport, SDTA #3 recommended that their website be thorough and inviting to potential bidders, and that representatives from the Airport speak at events that local chambers host.

SDTA #9, representing a public works trade organization, said that public agencies need to do more to encourage the participation of small firms: "We have 65,000 small businesses in California. We should be asking the question, 'How [can] local agencies work better … to help small business and themselves?' There should be a cooperation of public agencies on bidding, outreach, and communication to recruit these businesses."

**Several interviewees recommended that public agencies institute education programs, both for potential bidders and for their staff.** Interviewee #SD11, representing a Caucasian male-owned firm, suggested that public agencies should be involved in educating and training those in the community that are interested in entering the construction industry. He cited the success that a local organization has had in developing an apprenticeship program and training "willing workers to be subcontractors."

Interviewee #SD16, representing an African American male-owned firm, indicated that public agencies could provide more information and more learning opportunities to minority- and female-owned firms related to "how to do business."

Interviewee #SD30, representing an African American male-owned firm, stated that he would like to see education programs expand to include training beyond the classroom: "[The agencies] offer a lot of classes and seminars … [but] you really need more hands-on mentoring."

SDTA #7, representing a construction trade organization, stated that the target of most remedial programs is wrong. He said that rather than focusing on discrimination among contractors, public agencies should focus on educating people and getting them into the industry: "Almost their entire emphasis should be on getting people into the trade, getting people through construction tech. and into the universities. …"

SDTA #8, representing an electrical workers trade organization, reported that public agencies need to enforce apprenticeship laws — that is, they need to ensure that there are apprentices working on every project. She explained that most contractors move up in the construction industry through the trades, and in order to see a greater representation of minorities and females in the construction industry, public agencies have to foster education and apprenticeships.

SDTA #4, representing a local chamber of commerce, stated that MBE/WBE firms still need help with basic industry knowledge that is generally passed down from one generation to another. SDTA #4 also said that MBE/WBE firms also need improved access to information about bid opportunities and that language barriers continue to be an issue.

SDTA #11, representing a veterans trade organization, recommended that public agencies use more programs to educate MBE and WBE firms about bidding procedures and to educate their own staff about the needs of small firms in San Diego.

Regarding education and technical assistance programs, SDTA #9, representing a public works trade organization, said, "I view technical assistance as something that is one-on-one. Asking the questions, what do you need help with? Based on this definition there is not enough technical assistance being provided by public agencies. Technical assistance is limited with public agencies, because people at the public works are not able to give inside information. Additionally, they are busy and there are not enough people for one-on-one [interactions]."

**A few interviewees suggested that public agencies should segment large contracts into smaller pieces.** Interviewee #SD4, representing a Caucasian male-owned firm, suggested that public agencies should segment large projects into smaller pieces in order to help small firms be more competitive. He said, "Take a small project and break it up into smaller pieces. Even a small structural metal subcontract of $5 million is still too large for small subcontractors."

SDTA #2, representing a Hispanic American trade organization, stated that public agencies should segment large contracts to allow small firms to compete against larger ones. He went on to say that the way contracts are presently sized, "large businesses can crush the small businesses."

**Recommendations related to DBE programs**

**Some interviewees recommended that mandatory DBE goals should be in place.** Interviewee #SD14, representing a Hispanic American male-owned firm, stated that mandatory DBE goals need to be in place and need to be enforced: "Make [the goals mandatory]. Then everyone's got the same

playing field." He went on to say that good faith efforts should be eliminated, particularly for larger contracts that have more subcontracting opportunities.

Interviewee #SD2, representing a Caucasian female-owned firm, said that the Airport "should set aside contracts for small businesses."

Interviewee #SD31, representing a Caucasian male-owned firm, recommended that public agencies transition from using subcontractor goals to using mandatory quotas, assuming that there are enough competent firms available for the work: "If there were enough competent firms, I would say [quotas] might be something to consider."

SDTA #11, representing a veterans trade organization, recommended that mandatory goals should be reinstated, but said that all disadvantaged firms (e.g., African American-owned, Asian-American owned, female-owned, and veteran-owned) should have the same goal: "Make it all equal [for disadvantaged firms]."

SDTA #4, representing a local chamber of commerce, indicated that mandatory DBE goals are necessary and should be reinstated, because the playing field is not yet equal for minority- and female-owned firms.

**Other interviewees recommended that DBE goals and good faith efforts should be eliminated altogether.** Interviewee #SD11, representing a Caucasian male-owned firm, indicated that DBE programs should be eliminated: "Do away with regulations. Make it an open market. The small guy just can't handle all of the paperwork. They should do away with regulations. Primes should advertise and they should choose the most qualified, lowest bidder for the project." He went on to ask rhetorically, "Can we close the DBE department? It doesn't work."

Interviewee #SD6, representing a Caucasian male-owned firm, said that the Airport should maintain a Small Business Enterprise Program but eliminate its DBE program, at least how it is presently structured. He suggested that the Airport could keep DBE goals, but make them voluntary and eliminate good faith efforts. As an alternative to mandatory goals, Interviewee #SD6 suggested that prime contractors receive a monetary credit for using MBE or WBE subcontractors.

Interviewee #SD7, representing a Caucasian male-owned firm, indicated that race and gender should not play a role in contracting procedures: "If you are qualified to do a job your experience level should stand on its own, no matter the color of your skin.

SDTA #12, representing a workforce trade organization, said that minorities and women do not need preferential treatment — they need encouragement and the opportunity to acquire additional skills

**Some interviewees recommended that public agencies pay more attention to issues related to minority- and female-owned firms.** SDTA #5, representing a government advisory commission on minority issues, said that the City of San Diego and its public agencies do not focus enough on diversity issues and helping MBE and WBE firms: "I have seen what happens when there is a lack of focus … to have diversity. This is what is happening in the City [of San Diego] which I am sure is spilling into other agencies throughout San Diego. I have not seen a commitment to data collection or outreach in any seriousness throughout the City which I am sure is the same here at the Airport."

She continued, "Currently, there is no will or interest to accomplish a successful DBE program. When it comes from the top it will work."

SDTA #1, representing a local chamber of commerce, said that more needs to be done to help minority- and female-owned firms, but he was careful to say that assistance should not be limited to only those firms but should include other small firms in San Diego as well. He recommended that public agencies keep the issues of all local, small firms front and center, and that those issues "shouldn't just be a box to fill out on the side."

**One Interviewee suggested that public agencies should offer monetary incentives to prime contractors to work with MBE/WBE firms.** Interviewee #SD7, representing a Caucasian male-owned firm, stated that financial incentives would encourage prime contractors to use their own resources to help MBE/WBE firms get through the bid process. He suggested that prime contractors should receive a small percentage of MBE/WBE subcontractors' contract values.

**One Interviewee suggested that public agencies should institute limits on how long a particular firm can be awarded a contract.** SDTA #2, representing a Hispanic American trade organization, said, "There should be a limit on the amount of time you can do business with the public. For example, you can't do business longer than ten years in a row." He explained that without such limits, contracts transfer from one generation of a firm to the next. He described that practice as discriminatory: "This is general institutional racism and discrimination."

**Several interviewees offered non-specific recommendations about how public agencies can improve their contracting procedures and DBE programs.** Interviewee #SD21, representing a Caucasian male-owned firm, said that he is not familiar enough with DBE programs to know if there are certain components that are particularly helpful to MBE/WBE firms. He said that he is much more concerned about whether a subcontractor can help him complete a job rather than about the subcontractor's DBE status, "I'm absolutely a dollar driven guy. If somebody can walk in and help me make money, that's what's important to me."

SDTA #8, representing an electrical workers trade organization, said that any program that helps small firms (including MBE and WBE firms) is a good use of tax dollars.

SDTA #11, representing a veterans trade organization, indicated that remedial program work as well for MBE/WBE firms as they do for Disadvantaged Veterans Business Enterprise (DVBE) firms, with the caveat that the work ethic of veterans far exceeds that of minorities and women. He said, "If it works for service disabled veterans, it will probably work for minorities [and women], with the exception of one thing … the work ethic [of service disabled veterans is better]."

Related to those comments, Interviewee #SD31, representing a Caucasian male-owned firm that is DVBE certified, indicated that he supports the use of remedial programs for disadvantaged firms. However, he went on to say that DVBE firms deserve those preferences more than MBE/WBE firms: "Quite frankly, compared to the other minority categories, we feel we earned it — not born into it." With regard to MBE/WBE firms benefitting from evaluation preferences in particular, Interviewee #SD31 said, "I don't think they've earned it."

Interviewee #SD43, representing a Hispanic male-owned firm, indicated that in order to encourage MBE/WBE participation, prime contractors should be required to use subcontractors that they have

not used in the past, which would give opportunities to new firms: "I just think bigger companies should be able to try out different [subcontractors] and not just stick with the ones they usually do. I think it should be some kind of requirement where they have to try new, small companies just so we can get an opportunity to show what we can do."

SDTA #7, representing a construction trade organization, indicated that a major problem with existing remedies is that they are more political than they are practical. Regarding those politics, he said, "A politician doesn't care about who is getting contracts or not. They just want to create a program that they can tell people that they are [addressing minority and gender issues]. The results never are good. They don't care about [minority and gender issues] — they just want to create the program."

SDTA #3, representing a local chamber of commerce, indicated that she was unfamiliar with the term "DBE" and thus had no knowledge regarding the certification process.

### C. Caltrans anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from interviews that the study team conducted in connection with BBC's 2007 Caltrans study.

#### Educational, training, technical skills

**Most interviewees were not aware of any Caltrans programs aimed at educating, training, or improving the technical skills of small or disadvantaged business owners.** Several interviewees thought such programs would be helpful. Interviewee #CT44, a Middle Eastern male-owned firm, does not know about any educational/training programs to increase opportunities for small businesses to participate in Caltrans projects. He wishes Caltrans offered such programs. Interviewee #CT16, a white male-owned firm, attended a program in San Diego put on by Caltrans in conjunction with the Federal Highway Administration (FHWA) for professional development, and he feels that it was "a really good conference." CATA #3, a Hispanic trade association, said that there were some promising educational and training programs coming out of District 7 (he said he did not know about others), including a high school mentor program to promote careers in the construction and professional services fields.

**Some interviewees had experience with non-Caltrans training programs.** Interviewee #CT79, an African American male-owned firm, said the City of Los Angeles sponsored a training session for contractors at the mayor's office. Since Interviewee #CT79 is well-known and respected in his field, he was asked to recommend additional contractors to participate. The program was called "Business Boot Camp," and Interviewee #CT79 served as a mentor. The Los Angeles United School District also provided some training on the DBE certification process. He found these programs to be very helpful, and wishes there were more.

CATA #10, an Asian American trade association, stated he did go to a few educational/training programs but that they need improvement, particularly with regard to the selection process, preparation of the RFP, and training on how to prepare for auditing.

**Assistance with financing, bonding, and insurance**

**Very few interviewees are aware of any programs aimed at assisting small businesses obtain bonding, insurance, or financing, and even fewer have participated in such programs.** Many of the DBEs interviewed believed that such a program would be helpful, but ome interviewees were not interested in such a program. Interviewee #CT40, a white male-owned firm, stated that when the DBE program was in existence, his company had to provide some programs that assisted with bonding, insurance, financing, and educational programs — none of which he agreed with: "If you're gonna be in business, you should know how to do that stuff." CATA #2, an African American trade association, said that the State of California had programs to assist with bonding and insurance and that, though prime contractors are supposed to help subcontractors get financing, he had never seen it because some DBE firms do not want this kind of help and/or prime contractors do not want to give it.

Interviewee #CT49, an African American male-owned firm, said that Caltrans "at one time" helped out with bonding, insurance, and financing. Interviewee #CT48 an Asian American male-owned firm, stated that he receives information on programs to assist businesses with bonding, insurance, and financing, but he said that he could not remember if this information was from Caltrans or some other agency.

CATA #3, an Asian American trade association, said that he had not heard of Caltrans offering any programs to assist with bonding, insurance, and/or financing, but he again mentioned the U.S. Department of Transportation's loan guarantee program and suggested it as something Caltrans may wish to consider replicating.

Interviewee #CT9, a white male-owned firm, stated that he was aware of Caltrans' outreach efforts through various liason committees, but that attending a seminar and being selected for a project "are two different things[,]" and that outreach and training "won't be the whole solution . . ." Interviewee #CT9 stated that he had attended Caltrans-sponsored seminars for specifications, cost-estimating, and seismic research (the latter were coordinated with local universities), and that these programs had been "very rewarding."

The remaining interviewees had no knowledge of programs sponsored by Caltrans to assist with bonding, insurance or financing.

**Efforts to segment larger contracts into smaller contracts**

**Most interviewees were not aware of efforts by Caltrans to segment larger contracts into smaller pieces to promote opportunities for small and mid-sized firms to act as primes.** However, many interviewees would be in favor of this effort. Interviewee #CT81, a Hispanic male-owned firm, does not have any knowledge of Caltrans efforts to segment larger contracts into smaller ones, but that would be "great." Interviewee #CT1, a Native American male-owned firm, does not think Caltrans needs to streamline the bidding process because it is okay as it is. He thought it would be a "good idea [and] . . . a wonderful thing" for Caltrans to segment larger contracts into smaller contracts. Interviewee #CT13, a Pakistani male-owned firm, had no knowledge of or experience with Caltrans trying to break up larger contracts, but he said that this is something that Caltrans should do.

Interviewee #CT7, a white female-owned business, has had no experience with or knowledge of Caltrans trying to segment larger contracts into smaller ones, but suggested if Caltrans is going to do so, it should "exclude the big boys [from bidding] and then allow the big boys to compete [only] if there aren't any qualified GM medium or small size firms that are submitting them [bids]."

Interviewee #CT75, a white male-owned firm, has not heard of any efforts by Caltrans to break up large contracts into smaller projects in order to provide small businesses an opportunity to participate. He thinks it would be "stupid" to do so, as there are plenty of opportunities for smaller businesses, provided, of course, they can afford the bonding requirements.

**Some interviewees were aware of this effort by Caltrans.** Interviewee #CT45, a white male-owned firm, stated that Caltrans does segment some large contracts into smaller ones, but "they don't do enough of it." Interviewee #CT50, a white male-owned firm, has heard that Caltrans is making efforts to segment larger contracts into smaller contracts. He feels this is a good idea because certain sections of a project would have to be divided up and handled by specific groups within a large firm anyways.

CATA #1, an Asian American trade association, said that he had heard from Caltrans' director and others about a commitment to segment more of Caltrans' larger contracts to promote opportunities for small businesses and that he understood that District 4 and District 7 had been doing this, but also that he and the Association's members wanted to see this commitment become a formalized policy.

Interviewee #CT11, a Native American male-owned firm, is aware that recently, District 7 broke what could have been one or two very large contracts into three or four. Interviewee #CT11 knows that one of the contracts did go to a smaller business and that there is an effort to go that route, which he thinks is "outstanding."

CATA #10, an Asian American trade association, stated he has seen some effort to segment contracts but it is easier for Caltrans to manage one large project than many smaller projects and Caltrans thinks it is more cost effective although he disagrees with this because small firms are more competitive than larger firms.

**Recommendations related to remedies**

**Several interviewees suggested that Caltrans should increase its outreach efforts, such as training programs and job fairs.** Interviewees suggested Caltrans host industry-specific job fairs. This would allow vendors and contractors to use their time and money more efficiently by attending and marketing at only those events where others in their field are likely to be. Caltrans should encourage older, more established DBE businesses to attend DBE gatherings, as well as foster introductions between large and small contractors.

Interviewees said Caltrans should continue and further develop educational workshops on how to do business with Caltrans or how to submit bids. Caltrans should conduct targeted programs such as how to obtain certification, how to fill out bid forms, and how to navigate the Caltrans website. Caltrans could design programs to teach DBEs and small businesses how to compete in the private sector, including workshops on how to estimate costs and how to market effectively.

Interviewee #CT34, a white male-owned firm, recommended sponsoring "large-scale contracting workshops that deal with the consulting sector as a whole," to have "targeted days or targeted workshops that [ar]e geared specifically toward the various disadvantaged business categories." Interviewee #CT34 noted that, currently, Caltrans' outreach "seems to be very project-oriented, as opposed to need-oriented," and he suggested that Caltrans' focusing its outreach on specific firms and/or specific services might be a better way of "getting the word out in terms of what the opportunities were."

Interviewee #CT79, an African American male-owned firm, suggested increasing the number of training programs. CATA #1, an Asian American trade association, would like Caltrans to offer education and training programs for small firms on how to use its software for design work so that these firms can better compete for Caltrans jobs. CATA #11, a minority trade association, would like Caltrans to facilitate meetings between general contractors and minority firms. His members often make business connections at their meetings. CATA #3, a Hispanic trade association, would like Caltrans to expand upon its outreach efforts, especially in the professional services area, and begin hosting and/or sponsoring quarterly mixers where Caltrans staff and officials, prime contractors, small businesses, and DBE firms can all come together to get to know each other and learn about upcoming work opportunities. Caltrans should also offer workshops on how to prepare and submit proposals that meet Caltrans' needs. In order to ensure clarity in the bid documents, Caltrans should have a panel of DBE firm and small business representatives review Caltrans' current RFPs and recommend improvements.

Interviewee #CT44, a Middle Eastern male-owned firm, recommends that Caltrans focus on improving its methods of communication with contractors. He wishes that Caltrans advertised bidding opportunities more prominently and were otherwise engaged in efforts to make sure small businesses knew about them. CATA #1, an Asian American trade association, suggested Caltrans implement an "e-blast" system (like it used to have with "fax-blast") for advertising its jobs.

Interviewee #CT67, a white female-owned firm, recommended that Caltrans do a better job of outreach and notification.

An African American consulting firm suggested, at a public hearing in San Diego, that the project managers and engineers attend the procurement fairs and roundtables. "You'll do the procurement fairs, but you go out . . . and you don't have the participants or the projects managers going. The next level is where you would have the project engineers at these events, you know, very, very much roundtables." He would also like to see more "informal meeting, either going out to lunch or in the office where it's one-on-one time or they are a member of the AGC and they are a member of an advisory committee . . . its' you and eight people and . . . the public agency basically asking every question they want to." (P.H. San Diego, 3/22/07).

A representative of BRIDGE, a Native American organization, stated, at a public hearing in San Diego, that DBE firms "don't market themselves correctly. They are not selling themselves to the primes correctly. And that needs to be looked at." (P.H. San Diego, 3/22/07). A white male-owned consulting firm testified, at a public hearing in Los Angeles, "you need to market yourself because being on the list is only the first step. You have to take an active role in knocking on doors like you would in any business and show your wares and discuss your expertise because that's what's going to get you the work." (P.H. Los Angeles, 4/4/07).

Some trade associations suggested Caltrans develop a formal partnership in order to reduce duplicative efforts and enhance the effectiveness of Caltrans' program. They point out the officials and administrators working for Caltrans appear to have many connections with area trade associations, but there is no formal line of communication that holds a specific office or official responsible for maintaining these relationships and utilizing their expertise. These associations suggested this formal relationship could include convening quarterly meetings in which Caltrans offers an open invitation to trade associations to discuss all entities' programs and outreach. This partnership, they recommended could also coordinate the certification process between the trade associations and Caltrans to reduce redundancy. They suggested Caltrans could advertise and encourage businesses to attend events hosted by trade organizations, as well as inform vendors and contractors of the variety of trade organizations and their individual missions.

**Many businesses suggested breaking larger contracts into smaller pieces so that small businesses or DBEs could participate as primes (Interviewees #CT1, # CT 7, # CT 8, # CT 11, # CT 12, # CT 64, CATA #1, #2, #7).** Interviewee #CT51, a Hispanic male-owned firm, pointed to the importance of increasing work opportunities for DBEs, stating, "I think the one thing that I have said before is the more that they increase the participation in the contract, the more people are going to have an opportunity to work." Interviewee #CT12, an African American male-owned firm, suggests that smaller jobs would make Caltrans more "accessible" to small companies.

Interviewee #CT1, a Native American male-owned firm, stated that he is unable to take on contracts that are more than a couple hundred thousand dollars a year.

Interviewee #CT8, a Hispanic male-owned firm, is not aware of anything Caltrans had done to simplify or streamline the bidding process (which Interviewee #CT8 feels was "pretty easy" already) or to segment its larger contracts so as give more opportunities to smaller businesses, though he said, "I've often thought of why they didn't do that [break their contracts up]."

Interviewee #CT29, a Hispanic male-owned firm, stated that Caltrans should not waste people's time if the incumbent is going to be selected anyway, and his suggestion is for Caltrans to allow companies to be more upfront about whether the opportunity is really there. Also, the bundling of projects makes the projects out of reach for small entities, and so Caltrans should break them down into smaller projects.

Interviewee #CT51, a Hispanic male-owned firm, thought it would "be good" if Caltrans were to break up its larger contracts, although he did not know how Caltrans would go about breaking up a highway project, and he wondered if breaking up contracts would drive up costs. He said that Caltrans would be better off increasing the participation of DBEs on its contracts than trying to break its jobs down into smaller bidding contracts.

CATA #1, an Asian American trade association, suggested that Caltrans set aside a certain number or percentage of its contracts for segmenting. Caltrans should break down more contracts to provide more opportunities for small businesses to work as prime contractors.

**Some Interviewees recommend Caltrans should make drawings and bid papers more accessible and more affordable by developing an electronic format (available through the internet or on cd rom).** These interviewees said the goal should be to reduce the cost burden placed on contractors while maintaining an effective and fair bidding process. Some of the issues these interviewees say to

consider include 1) whether the number of copies required to bid can be reduced; 2) whether answers to some of the information required at the initial bid (i.e. bonding) can be postponed until the contractor moves a step closer to successfully winning the bid; and 3) whether the standard forms and process are appropriate for distinct procurement categories.

**Some interviewees suggested that Caltrans foster a program that focuses on development of small businesses, which might limit bidding on selected small contracts to those registered as a small business with Caltrans (CT Interviewees #49, #63).** The purpose of this program would be to reduce the perception of large, national contractors being awarded small Caltrans contracts. Alternatively, interviewees suggested Caltrans initiate a preference for small businesses that operates similarly to its local preference allowance. Interviewee #CT49, an African American male-owned firm, recommended to improve Caltrans DBE program that Caltrans (as he understood some other agencies had done) implement a preference and/or percentage requirement for small business utilization on its project, and he said that doing so would be a "very good thing" for businesses that are just starting out.

Interviewee #CT65, a white male-owned firm, sees large contractors always getting bids because smaller companies are not receiving subcontractor opportunities. Interviewee #CT65 stated that most small business are becoming disadvantaged because they cannot get work, as they are so small, or the work is being done in-house. No small contractors can afford the insurance and bonding requirements that are as large as those required by Caltrans, so there is no point in even bidding for work. He notes that while women and minority owned business continue to get special privileges, the single, one-man companies are becoming an "endangered species" when they've been the mainstay of the industry.

**Some interviewees suggested promptly informing all bidding contractors of the name of the company that won the contract.** This would afford them the opportunity to raise any issues or problems as to the bid process and contract in a timely manner. Knowledge of successful bidders also encourages other companies to seek them out as potential partners in future contracts. Intervierees suggest informing contractors of the reasons behind their loss of the contract to promote review and growth. A Hispanic female-owned consulting firm stated, at a public hearing in Los Angeles, "firms have listed DBEs to meet contract-specific goals without notifiying the respective DBEs that they were named in the bid or proposal." (P.H. Los Angeles, 4/4/07).

**Recommendations related to DBE programs**

**Some interviewees recommended that Caltrans eliminate its DBE program altogether.** Interviewee #CT17, a white male-owned firm, stated: "I'd like to see [Caltrans' DBE program] abolished myself." He believes the "status quo" should change, but not so much with respect to DBEs as with respect to the Caltrans bidding process (how Caltrans selects and awards bids), which he said frustrates him as a taxpayer.

Interviewee #CT17 suggested Caltrans needs to look beyond ownership and "get more in the business of finding out how many minorities [a] firm has working for them instead of a business that could be owned by a woman . . . [but] not have any minorities at all working there." Interviewee #CT17 stated that his firm has "more Hispanic, Asian, and Middle Eastern [people] working here than probably whites," and expressed frustration that the DBE program is focused only on ownership. According to Interviewee #CT17, if the goal of the DBE program is to increase the

number of people of color working in the transportation industry, then the program does not accomplish this goal by looking only at a firm's ownership.

Interviewee #CT40, a white male-owned firm, would like the DBE program disbanded in its entirety. She thinks there should only be some sort of emerging small business program rather than DBE categorizations. She has spoken to several contractors, and notes that the process for getting certified as a DBE is entirely too difficult and there is too much paperwork. She notes that one subcontractor who was a DBE did not even go through with recertification because the process was so daunting.

Interviewee #CT69, a white male-owned firm, believes the DBE program should be terminated altogether. He feels that is the only way he has a fighting chance of getting work. The suspension of the DBE program last year flooded his business with work. Interviewee #CT76, a white male-owned firm, is in favor of eliminating the program and feels the preferential treatment given to DBEs is unfair, as well as completely unnecessary.

**Some interviewees suggested a time limitation be placed on the DBE program.** Interviewee #CT9, a white male-owned firm, stated that, fundamentally, he was not sure if he agrees with the DBE program. He did state that it should be "a time dependent function," such that a business should be accorded DBE status for only a limited period of time. According to Interviewee #CT9, "it's fine for you to have a DBE certification for a period of time," but that "after five years you need to be on your own, or your business should shut down."

**Some businesses suggested that Caltrans should reinstitute the race- and gender-conscious goals.** CATA #10, an Asian American trade association thinks "throughout the state there are many, many available, willing, and capable DBE firms but if Caltrans does not send the message to the big firms, they are not willing to team up with the small firms. But if Caltrans has the top commitment and sends the message to the larger firms [requirement of 10 percent goal or higher ("which would be better")] . . . if that message is there then you will see a big improvement on DBE participation."

CATA #3, a Hispanic trade association, is in favor of making the program "race-conscious." CATA #2, an African American trade association, said that the impact of not having any goals or preferences for firms owned by people of color and women can be seen in California by looking at the data from the awarding of public sector contracts in the pre-209 and post-209 eras, and that California was unique in this regard. According to CATA #2, a DBE program is needed because "without a program, the primes are just not going to do the right thing. They're just not."

Interviewee #CT31, an African American female-owned firm, stated: "Well, the heart of it is [that] if there are those firms that exist, if they do not continue to exist, then there will not be firms that can be contracted. And there will not be new firms coming up behind them. So if Caltrans is not making an effort to ensure that WMBEs not only have access to but actually are awarded contracts there will not be a Caltrans DBE program because there will not be any [DBEs]. I mean, bottom line is if you are without a contract you are not going to be in business. I do not care what business you are in. If you do not have the work and if you do not get paid, you are not going to be in business."

Interviewee #CT39, a Hispanic male-owned firm, recommended that the DBE program be reinstated because, according to him, "small companies like us . . . without the DBE, we wouldn't even exist. It might be new companies want to start up; they'd find it hard." Interviewee #CT67, a white female-

owned firm, said that dropping the DBE program would be an "insult" because it would show that Caltrans is not concerned about small businesses. She recommended Caltrans: keep the program; develop a good mentor-protégé program; do more outreach to, among other things, spread awareness of the program and work opportunities; and do a better job of communicating with small businesses and DBE firms.

CATA #1, an Asian American trade association, stated Caltrans should increase the DBE goals on its project. A small African American owned construction company who reported fasification of good faith efforts stated "my personal feeling is that it shouldn't be a goal. It should be a requirement." (P.H. San Diego, 3/22/07).

**Some interviewees suggested setting aside certain projects for DBEs.** CATA #3, a Hispanic trade association, would like Caltrans to earmark a certain number or percentage of small contracts for DBEs each year. Interviewee #CT32, an Asian American female-owned firm, suggested that Caltrans could improve its DBE program by setting aside small dollar values for DBEs, so that DBEs can start relationships with other businesses and "see how the business relationship works out with that initial project and then grow from there." She said that she did not think that "just setting goals with these large businesses really works or is effective" and that she thinks Caltrans "need[s] to really go directly to the DBEs."

Interviewee #CT32, an Asian American female-owned firm, said that "just like [in] the federal sector . . . , DBEs can get a large business to be a sub for them," and she felt that this arrangement would be a "win-win for everybody."

Interviewee #CT7, a white female-owned business, suggested that Caltrans keep an on-call list and award jobs to DBEs by rotation, as the MTA does. He stated that Caltrans "needs to create a bridge from DBEs to primes" because when a firm loses its DBE status due to its exceeding the net worth threshold, "you're still too small to be a prime unless you have a specific area of specialty that nobody else offers." She noted that such niche firms were more common in the biology and environmental reconnaissance fields but stated that "in engineering that's really hard to have and there's no bridge there from being a DBE to be[com]ing a prime because there's so much emphasis placed on size."

Interviewee #CT13, a Pakistani male-owned firm, recommended Caltrans subdivide its projects into smaller ones that can be handled by DBE firms. This way, suggested Interviewee #CT13, the DBE firms could deal directly with Caltrans instead of "being at the mercy of some big prime" to be part of the team: "Why does it always have to be that we are at the mercy of some prime to benefit from DBE status when Caltrans can have those benefits directly, rather than going through all these extensive programs of mentoring and certification . . . [and] awareness . . . .?" According to Interviewee #CT13, Caltrans does not need "all these mentoring programs and stuff like that" but instead needs to simply make sure that DBE firms — and not the same ones over and over again — are used.

Interviewee #CT13 recommends Caltrans require prime contractors to rotate the DBE subcontractors they use on different projects, so that different DBE firms would have the opportunity to work for these primes (instead of the same firms getting all the work).

**Some interviewees suggested Caltrans advertise and promote the DBE program.** As part of this effort, Interviewees said Caltrans should inform businesses of the Caltrans contractor directories and encourage prime contractors to use the directories to find quality DBEs and small businesses. They stated Caltrans should keep the directories current and accurate and provide methods whereby vendors and contractors can easily submit updated information. Interviewees suggest Caltrans could collaborate with trade organizations to create a comprehensive directory.

CATA #3, a Hispanic trade association, would like Caltrans to publish and publicize a comprehensive directory listing DBEs categorically, both alphabetically and by the services they provide. Interviewee #CT68, a white male-owned firm, recommended making contractors and vendors more aware of the DBE program.

Some interviewees suggested greater communication and notification of opportunities to work with Caltrans. CATA #11, a minority trade association, believes the main barrier in his members pursuing Caltrans work is lack of knowledge. He would like Caltrans to publicize all their projects in a very open manner and provide a complete description of the scope of work (not just a one liner like "ramp widening"). He would like Caltrans to tell contractors where to pick up the plans and who they can go to with questions.

Interviewee #CT46, an Asian American male-owned firm, said that "the important issue is communication." He stressed that it is important for Caltrans to make available to businesses someone with whom they can talk in person and suggested that Caltrans could create liason or outreach officers that would be assigned to different categories or alphabetical groupings of companies.

### D. Telephone interview anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures

The following anecdotes regarding participation in and awareness of race-, ethnic-, and gender-neutral programs or measures were obtained from telephone interviews that the study team conducted in connection with BBC's availability analysis of Southern California firms.

**Some telephone interview respondents also recommended that public agencies should segment large contracts into smaller entities.** Both MBE/WBE and majority-owned firms indicated that smaller contract elements would benefit small firms. For example, a minority-owned firm said, "[Public agencies] should be able to make the bids smaller so us small guys can bid on them."

# APPENDIX C.
# Utilization and Case Study Data Collection

# APPENDIX C.
# Utilization and Case Study Data Collection

This appendix describes the data collection and review process for MTS utilization and case study data.

## Utilization Data

**Data request.** BBC initially requested the following information for all procurements above $2,500 that MTS awarded during the study period (January 1, 2003 – December 31, 2007):

- Date of procurement;
- Name of prime contractor or vendor that performed the work;
- Procurement amount;
- Description of work; and
- Whether MTS treated the procurement as FTA-funded.

BBC requested similar information about subcontracts that were associated with each procurement.

**Procurement data.** MTS maintains electronic databases for contracts and purchase orders. MTS provided all of the procurement information that the study team requested (listed above) for all procurements that the agency awarded during the study period. The databases also included unique procurement numbers that allowed BBC to link each prime contract to other data sources pertaining to subcontractors. MTS instructed the study team on how to use the provided data and how to aggregate dollar amounts from different aspects of the same procurement.

**Subcontract data.** MTS maintains information about proposed subcontracts that were worth at least 0.5 percent of total procurement amount in its procurement files, regardless of whether they went to DBEs. The study team worked with MTS staff to identify procurements that included subcontracts, and BBC and GCAP Services (GCAP) collected hard copy data on subcontracts from procurement files.

**Vendor data.** After collecting procurement data from MTS, BBC obtained information about the vendors that performed the work, including:

- Primary line of work;
- DBE/MBE/WBE status and race/ethnicity/gender of ownership;
- Address and phone number;
- Year in which the firm was established; and
- Firm size.

The study team obtained the information from Dun & Bradstreet, vendor interviews, the California Unified Certification Program (CUCP), and data from BBC's 2007 Caltrans study. The study team also used a vendor database that MTS provided. The database contained information such as addresses and phone numbers for vendors that MTS used during the study period.

**Agency review.** After BBC collected all procurement and vendor data, the study team compiled the information in tables for MTS review. BBC used MTS and other Consortium agencies' feedback to finalize procurement and vendor data.

### Case Study Data

During the study period, MTS awarded nearly 140 procurements that BBC included in the utilization analysis. For the case study analysis, the study team obtained bid and other information from procurement files for a sample of MTS procurements.

**Sampling method.** MTS maintains detailed bid information for construction procurements above $50,000 and engineering and other goods and services procurements above $100,000 that were awarded in 2005, 2006, and 2007. The study team included all procurements that met those criteria in the case study sample. The sample consisted of 14 procurements — 8 construction procurements and 6 other goods and services procurements.

**Case study documents.** For each procurement in the case study sample, GCAP attempted to collect information about any firms that formally showed interest in bidding, firms that actually bid on the procurement — including bid amounts and evaluation summaries when available — and the firm that was awarded the procurement. Several documents were relevant to the analysis, including:

- Planholders lists;
- Pre-bid conference sign-in sheets; and
- Bid tabulations and evaluations.

The study team collected as much information as was available in the procurement files for each procurement in the case study sample. BBC and GCAP successfully collected information for 8 of the 14 MTS procurements selected for the case study sample.

# APPENDIX D.
# Availability Analysis

# APPENDIX D.
# Availability Analysis

This appendix describes study team steps to determining MBE/WBE availability for transit-related construction, engineering and goods and services firms in Southern California. It expands on the information provided in Section II regarding the availability study.

## Overall Approach

As discussed in Section II, BBC integrated responses from two sets of telephone interviews conducted by Customer Research International (CRI). The first interviews were conducted in 2006 and 2007 with transportation construction and engineering firms for the Caltrans Availability and Disparity Study completed in 2007. Appendix C from the Caltrans study provides a detailed overview of the approach and survey process for these interviews. The second set of interviews were conducted in 2008 and 2009 and consisted of two additional sets of firms not captured in the Caltrans survey important to the availability analysis for Consortium contracts:

- Firms in transit-related procurement areas not included in the Caltrans study; and
- Firms in the Caltrans industries founded since the telephone interviews for the Caltrans study.

BBC identified firms for telephone interviews using a Dun & Bradstreet (D&B) database. The study team attempted to reach every business in the relevant 8-digit industry codes maintained by D&B rather than draw a sample of listings. In the 2008-2009 interviews, the study team attempted to reach 14,485 business establishments and completed interviews with 1,822. After screening for qualifications and interest in future work with government agencies, BBC analyzed MBE/WBE availability from a database of 2,480 firms.[1]

## Firms Interviewed

BBC identified the primary subindustries for firms engaged in FTA-funded procurement for Consortium agencies. The study team used this information to select 8-digit industry codes representative of the procurement areas principally involved in transportation contracting. Many of these subindustries were included in the availability analysis for the Caltrans study. BBC purchased a list of Southern California business establishments in these subindustries that Dun & Bradstreet identified as new since the telephone interviews for the Caltrans study. For this purchase, BBC used the subindustry codes listed in Appendix C of the Caltrans study.

BBC also purchased listings from D&B for subindustries that were not included in the Caltrans study. Figure D-1 provides a list of these subindustries and the D&B industry codes used for business listings purchased for the 2008-2009 survey. BBC only obtained listings of firms located in Southern California for the 2008-2009 survey.

[1] Including firms in the Caltrans study and firms interviewed in 2008-2009 as part of the Consortium study. BBC used "firms," rather than "business establishments," as the unit of analysis for availability calculations.

## Conducting the Availability Interviews

**Interview instrument.** The study team drafted telephone interview questions to collect business information from firms working in relevant subindustries based on the questionnaire used in the Caltrans study. Before this survey was used in the field, MTS reviewed the survey instrument and BBC tested it in a pilot survey. The basic interview instrument for construction and engineering firms is provided at the end of this appendix. The questions were slightly modified for certain groups of firms based on line of work in order to use the terms commonly employed in those fields.

Fax and email versions of the interview instrument were also developed. These versions were faxed or emailed to firm owners or managers initially contacted by telephone who requested that a survey be faxed or emailed to them. They then returned the completed questionnaire to BBC via fax or email.

**Interview process.** BBC contracted with Customer Research International (CRI) to conduct the telephone interviews. CRI programmed and conducted the interviews and provided regular reports on results. BBC instructed CRI to make up to at least five attempts to reach a person at each phone number. This design is intentionally persistent to minimize non-response.

BBC instructed CRI staff to identify and interview an available company representative such as the owner, manager, chief financial officer or other key official who could answer questions about the company's line of business, past contracts, financial and employment figures, interest in work with various clients, and ownership status. The survey was conducted in late 2008 and early 2009.

## Telephone Interview Performance and Completion

The survey process began with a very large number of D&B business listings for organizations in Southern California in certain lines of work potentially related to transportation contracting. At the end of the survey analysis process, firms reporting that they are available for, had bid on, or had performed transportation construction or engineering work were included in the database used for the availability analysis.

BBC obtained a list of 14,485 business establishments in Southern California. Of these businesses, 1,822 completed telephone interviews, as explained below.

**Valid business listings.** Some of the business listings purchased from D&B were:

- Duplicate numbers (72 listings);
- Non-working phone numbers (4,150 listings); or
- Wrong numbers for the desired businesses (1,071 listings that could not be reached through follow-up calls).

Figure D-1, on the following page, shows how the beginning set of 14,485 listings was reduced to 9,192 because of these factors. Some non-working phone numbers and some wrong numbers for the desired businesses reflect firms going out of business or changing their names and phone numbers between the time that D&B listed them in its database and the time when the study team attempted to contact them.

Figure D-1 also shows the final disposition of the 9,912 business establishments that CRI attempted to contact:

- Slightly more than one-third of these business establishments could not be reached after a minimum of five phone calls (3,365 establishments). Call-backs to these business establishments were made at different times of day and different days of the week in order to maximize response.

- About 2 percent of these business establishments could not provide a staff member to answer the survey after a minimum of five phone calls (181 establishments).

- Interviews were only conducted in English. About 2 percent of these business establishments could not communicate with the interviewer due to language barriers (185 establishments).

- About 21 percent refused to participate in the interview (1,889 establishments).

- About 19 percent asked the study team to send the survey via fax or e-mail but did not successfully obtain the fax or e-mail (after multiple attempts) or received the survey but did not return a completed survey to BBC (1,750 establishments).

In sum, BBC obtained completed surveys from 1,822 business establishments, or about 20 percent of the business establishments with valid phone listings. The very large number of responses and the relatively high response rate add to the statistical validity of the results.

**Figure D-1. Disposition of attempts to survey D&B business listings**

Note:

* After multiple attempts to complete survey.

Source:

BBC Research & Consulting from 2008/2009 Availability Survey.

| | Number of firms | Percent of business listings |
|---|---|---|
| **Beginning list** | **14,485** | |
| Less duplicate numbers | 72 | |
| Less non-working phone numbers | 4,150 | |
| Less wrong number/business | 1,071 | |
| **Unique business listings with working phone numbers** | **9,192** | |
| Less no answers* | 3,365 | 36.6% |
| Less couldn't reach responsible staff member* | 181 | 2.0% |
| Less language barriers* | 185 | 2.0% |
| Less refused to answer | 1,889 | 20.6% |
| Less unreturned fax/e-mail* | 1,750 | 19.0% |
| **Firms that completed telephone interviews** | **1,822** | **19.8%** |

**Firms that report being available for local agency work in Southern California.** Among the D&B listings successfully contacted, only a portion is deemed available for any type of local agency transportation contracting work, as explained below:

- Slightly more than one-quarter of the firms that completed an interview indicated they did not perform transportation contracting work (503 establishments). The interview ended when a business owner or manager reported that the business did not do this type of work.

- About 1 percent of the surveyed establishments were excluded because they were an organization other than a for-profit business (19 establishments). Non-profit and public sector agencies were not to be included in the survey as the availability analysis focuses on for-profit firms. The survey ended when a respondent reported that the establishment was something other than a for-profit business.

- About 1 percent of surveyed establishments indicated that they were involved in transportation contracting but reported main lines of work that were well outside the scope of the Availability Survey (24 establishments). For example, some firms identified by D&B as highway construction or concrete firms reported in the survey that they did transportation construction-related work, but that their primary line of business was single family homebuilding or other specialty outside the scope of the study. CRI completed the full survey with these firms. Prior to analyzing results, BBC excluded them from the final data set.

- Among firms available for transportation-related work, 446 said they were not interested in either prime contracting or subcontracting opportunities on such projects, had never bid or received an award for similar projects in any sector in Southern California or because they did not provide valid responses to the questions about geographic scope.

After these exclusions, the survey effort produced a database of 830 for-profit firms in California that were in the lines of business pertinent to the survey and reported they performed transportation contracting work for local agency in Southern California (see Figure D-2).

**Figure D-2. Screening of completed business telephone interviews for possible inclusion in the availability analysis**

Source:

BBC Research & Consulting from 2008/2009 Availability Survey.

| | Number of firms | Percent of business listings |
|---|---|---|
| **Firms that completed surveys** | **1,822** | **100.0%** |
| Less no transportation-related work | 503 | 27.6% |
| Less not a business | 19 | 1.0% |
| Less line of work outside of scope | 24 | 1.3% |
| **Firms available for transportation contracting work** | **1,276** | **70.0%** |
| Less no interest in future work, no past bid/award, or missing geographic scope | 446 | |
| **Firms available for Southern California local agency work** | **830** | |

**Firms interviewed in Caltrans study.** About 1,650 firms included in the 2007 Caltrans study meet the criteria to be included as potentially available for Consortium agency transportation contracts. For more information on the 2006 survey, see Appendix C of the 2007 Caltrans Disparity Study.

**Summary.** Of the firms successfully interviewed in the 2007 Caltrans study and the 2008-2009 interviews, 2,480 were for-profit firms meeting the criteria to be considered for local agency transportation contracting work in Southern California. These fundamental availability criteria include:

- Willingness to perform work related to transportation contracting (in the lines of business pertinent to this study and after combining multiple responses for firms with more than one office);
- Are qualified and interested in performing work for local agencies in the future, as a prime contractor and/or subcontractor (or supplier or trucker);
- Have performed or bid on work in the past (in the public or private sector); and
- Indicated they are willing to work (or have worked) in Southern California and have an office in Southern California.

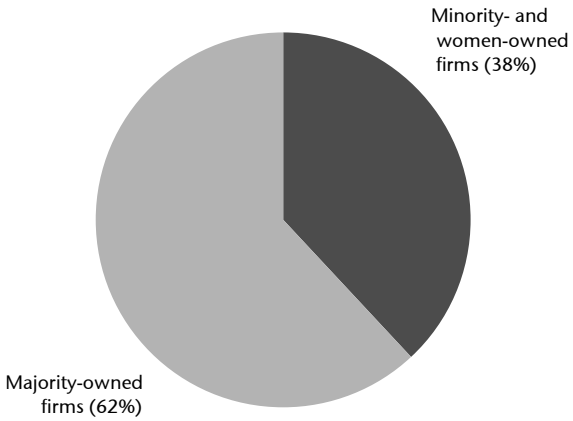
## Percentage of Firms Interviewed that are MBE/WBEs.

As noted above, 2,480 firms in the transportation contracting industry reported qualifications and interest in future government transportation work and had performed or bid on such work in the past. Of these firms, 38 percent reported that they were minority- or women-owned (see Figure D-1). As this percentage is based on a simple "headcount" of firms, it is just a starting point for the availability analysis.

**Figure D-3.**
**MBE/WBEs as a share of firms available for Southern California transportation contracting work**

Note:
Unweighted.

Source:
BBC Research and Consulting from 2006 Availability Interviews and 2008-2009 Availability Interviews.



## Determining Availability for Specific Contract Elements

BBC screened firms for the availability analysis by applying two types of criteria:

- Fundamental criteria that a firm must meet to be considered in the analysis, regardless of the contract; and
- Criteria that a firm must meet to be considered for a particular contract element.

**Fundamental availability criteria.** A firm must meet the fundamental availability criteria listed above to be counted in the availability analysis for any contract element.

**Contract specific screening criteria.** Firm availability for a particular set of contracts was determined contract-by-contract for each element of a contract (i.e., prime portion and subcontract portions).

Firms were counted as available for some prime contracts or subcontracts and not for others depending upon the characteristics of the contract element and the characteristics of the firm.

For each contract element, the study team identified:

- Contract role (prime contractor or subcontractor);
- Contract size or contract element size;
- Award date for the contract; and
- Work specialty.

**Contract role.** To be counted as available for a prime contract element, the firm must qualify for prime contractor roles according to the criteria discussed above. Similarly, to be counted as available for a subcontract element, a firm must qualify for a subcontractor role.

**Contract amounts.** Available firms for subcontract elements were required to have a largest contract status greater than or equal to the size of the contract element. For prime contract elements, available firms needed a largest contract status equal to or greater than the entire contract amount.[2]

**Contract date.** To be counted as available for a contract element, firms were required to have an establishment date during or before the year in which that prime contract began.

**Contract location.** Available firms were required to be willing to work in the San Diego area.

[2] For firms in the "vehicle body repair" subindustry, firms meeting other availability requirements were available for any size of contract. For firms in "security services," firms reporting availability for contracts greater than $1 million were considered available for all sizes of contracts.

**Work specialty.** Each contract element was assigned a "work specialty code" based on the main line of work of the firm that actually performed the contract element. For utilized firms, BBC determined the work specialty based on the following information:

- Industry code from Dun & Bradstreet;
- Availability or utilization survey response;
- Feedback from agency staff; and
- Contract description.

For the majority of contract elements, firms were only counted as available if they were in the same subindustry as the contract element under consideration. In some cases, the subindustry code of a contract element was outside the core areas that were studied in the Availability Survey. For types of work coded as other building construction, other heavy construction, other construction materials, and other construction services, firms in related subindustries were counted as available.

## Potential Limitations

The study team explored several possible limitations in its approach to estimating relative availability. These include:

- Assessing relative MBE/WBE availability and not providing a count of all available firms;
- Use of D&B data;
- Selection of specific subindustry codes (e.g., NAICS or SIC codes) to include in the availability study;
- Non-response bias; and
- Reliability of answers to survey questions.

**Not providing a count of all firms available for agency work.** The purpose of the telephone interviews is to estimate the *percentage* of firms available for transportation contracting work that are minority- and women-owned and controlled (i.e., "relative" MBE/WBE availability). The interviews provide such information. The interviews do not provide a comprehensive listing of every firm available for transportation work and should not be used as such.

The survey approach of measuring relative availability has been approved by federal courts (see, for example, the Seventh Circuit decision on *Northern Contracting*) when considering local implementation of the Federal DBE Program.[3] Use of a survey is recommended as an approach to measuring availability in the USDOT guidance on goal-setting.[4]

[3] *N. Contracting, Inc. v. Illinois DOT,* 473 F.3d 715 (7th Cir. 2007)

[4] USDOT. *Tips for Goals Setting in the Disadvantaged Business Enterprise (DBE) Program* (http://osdbu.dot.gov/?TabId=133)

**Use of D&B data.** Dun & Bradstreet provides the most comprehensive private database of business listings in the United States. Even so, this database does not include all establishments operating in the relevant geographic market area:

- **New firms.** There can be a lag between formation of a new business and inclusion in the database. This means that the newest firms may be underrepresented. Based on the firms successfully interviewed in the availability surveys, newly formed firms are more likely than older firms to be minority- or women-owned, which suggests that MBEs and WBEs might be slightly underrepresented in the final database of interviewed firms.

- **Home-based businesses.** The D&B database is more likely to miss a business working out of the home than a firm with a distinct business office. Small, home-based firms are more likely than large firms to be minority- or women-owned, which again suggests that MBEs and WBEs might be underrepresented in the availability data.

**Selection of specific subindustry codes.** Defining an industry based on specific subindustry codes (e.g., NAICS or SIC codes) is a standard step when analyzing an economic sector. Government and private sector economic data are typically organized according to these industry codes. As with any such research, there are limitations when choosing the specific subindustry codes to define in the transportation contracting industry.

A further limitation to the use of subindustry codes to classify businesses, or any other work type classification method, is that some subindustry codes are imprecise and overlap with other business specialties. Even though BBC used D&B's own 8-digit subindustry codes, D&B does not maintain a detailed 8-digit code for each firm in its database. In addition, businesses often span several types of work, even at a lower level of specificity. This overlapping makes classifying businesses into a single line of business difficult and imprecise. When firm owners and managers were asked to identify primary lines of business, they often gave broad answers. For these reasons, BBC collapsed many of the subindustry codes into broader work categories in the final database of firms available for transportation contracting work. This presents a more accurate assessment of MBE/WBE availability by work field than possible at a finer level of detail.

**Non-response bias.** Analysis of non-response bias considers whether firms not successfully surveyed are different from those successfully surveyed and included in the final data set for availability analysis. There are opportunities for non-response bias in any survey. The study team considered the potential for non-response bias due to:

- Survey sponsorship;

- Work specializations; and

- Language barriers.

**Survey sponsorship and introduction.** Interviewers introduced the survey by identifying Consortium agencies, including MTS, as the survey sponsors in order to encourage firms that performed transportation contracting work and related suppliers to participate in the interview. Firms would be less likely to answer somewhat sensitive business questions asked by an interviewer unable to identify the sponsor of the survey. In fact, some firms asked to check with a Consortium agency to verify its sponsorship prior to answering the survey.

Analysis of survey refusal rates suggests that sponsorship had an overwhelmingly positive effect on response rates. Only 21 percent of business listings potentially contacted refused to answer the survey.

**Work specializations.** Businesses in highly-mobile fields, such as trucking, may be more difficult to reach than firms more likely to work out of a fixed office (e.g., engineering firms). This suggests that survey response rates will differ by business specialization.

If all surveyed firms were simply counted to determine relative MBE/WBE availability, this would lead to estimates that relied too heavily on fields that could be easily contacted by telephone. This potential non-response bias is minimal in this study because the availability analysis compares firms within work fields before determining an MBE/WBE availability figure. In other words, the potential for trucking firms to be less likely to complete a survey is less important because the number of MBE/WBE trucking firms completing surveys is compared with total number of trucking firms, not all firms across all fields.

**Language barriers.** MTS contracting documents are in English and not other languages. The study team made the decision to only include businesses able to complete the survey in English in the availability analysis so to remove language barriers as a potential explanation for any differences in outcomes observed between MBE/WBEs and majority-owned firms.

Individuals who could not communicate in English well enough to complete the interview and could not locate another individual to answer survey questions in English were not captured in the survey research. There were 185 firms out of 9,192 that could not be interviewed due to language barriers. Choosing to conduct the study in English and not translate it into other languages may have a very small effect on the relative number of minority-owned firms that completed interviews.

**Response reliability.** Firm owners and managers were asked questions that may be difficult to answer, including firm revenues and employment. For this reason, the study team prompted them with D&B information for their establishment when available, and asked them to confirm that information or provide more accurate estimates. Further, respondents were typically not asked to give absolute figures for difficult questions such as firm revenues. Rather, they were given ranges of dollar figures or employment levels.

**Summary.** BBC examined several potential sources of non-response bias. It is possible that MBEs and WBEs were somewhat under-represented in the final database of available firms. However, BBC concludes that this potential under-representation of MBE/WBEs does not significantly affect the analyses.

## Review of Interview Information

The study team utilized information collected in other portions of the study to review certain aspects of the data collected in the availability interviews. These data include:

- MTS, Consortium agency and Caltrans contracting records;
- MBE/WBE/DBE status from Metro's Department of Diversity & Economic Opportunity (DEOD);
- MBE/WBE/DBE status from Metrolink's and OCTA's vendor data and information maintained by other Consortium agencies; and
- MBE/WBE/DBE status from the California Unified Certification Program.

The study team used data from these four sources to review responses to questions regarding firm ownership, past contracting amounts, contract role, and geographic availability when these data were missing from a firm interview. The study team only changed an interview response when an availability response conflicted with the above records.

**MBE/WBE status and ethnicity classification.** BBC determined the race/ethnicity/gender ownership of every interviewed firm using the following information:

- MBE/WBE/DBE status from Metro's Department of Diversity & Economic Opportunity (DEOD);
- Information from the Caltrans documents collected for the 2007 Caltrans Study;
- Information on firms from the California Unified Certification Program;
- MBE/WBE status and ethnicity classification from the availability survey;
- MBE/WBE/DBE status from Metrolink's and OCTA's vendor data and information maintained by other Consortium agencies; and
- D&B MBE/WBE status and ethnicity (primarily for firms missing information from agency records, the CUCP database, or the Availability Survey).

BBC resolved conflicts between the sources of data on a case-by-case basis, including calling the firm again or by discussing the firm with Consortium agency staff.

**Contract role.** BBC assigned each firm a contract role as prime contractor, subcontractor, or prime and subcontractor using:

- The contract role as indicated from the availability interviews.
- The contract role from Consortium Agency contracting records if the firm participated in a transportation contract and did not mention that role during the availability survey. For example, a firm might have indicated only prime contractor status in their availability survey response, but appeared as a subcontractor for an agency contract. The final role classification for that firm would be "prime and subcontractor."

**Geographic availability.** BBC determined whether a firm was available to work in the San Diego area using:

- An appropriate response in the availability interview; and
- Performance of work for one of the two Consortium agencies in the San Diego area or past work performed for Caltrans or local agencies in Caltrans District 11.

**Largest contract.** BBC determined the largest contract or subcontract amount each firm had performed or bid on using:

- The largest contract amount reported in the availability interview; and
- The largest amount each firm won according to Consortium agency contracting records, if this exceeded the amount reported in the availability interview. For example, if MTS listed a firm's largest contract during the study period at $1 million, but the firm only reported availability for contracts under $500,000, BBC would consider the firm available for contracts up to $1 million.

**Establishment date.** BBC used the establishment date reported in the availability interview where available. Firms that could not recall or did not report an establishment date were counted as having been founded before the study period.

**Work specialty.** The work specialty code for each firm is based on the description of the main line of business confirmed or identified by the firm owner or manager in the availability interview along with information from Consortium contracts and input from Consortium contracts and agency staff.

# APPENDIX E.
# Detailed Disparity Results

| Figure E- : | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Funding** | | | | | | | | | | | | | | | | |
| FTA and local | | | | | | | | | | | | | | | | |
| FTA | ■ | ■ | | ■ | ■ | | ■ | ■ | | ■ | ■ | | ■ | ■ | | ■ |
| Local | | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | |
| **Type** | | | | | | | | | | | | | | | | |
| All | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | | | | | | |
| Construction | | | | | | | | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| Engineering | | | | | | | | | | | | | | | | |
| Goods and services | | | | | | | | | | | | | | | | |
| **Time period** | | | | | | | | | | | | | | | | |
| 2003-2007 | | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | |
| January 1, 2003 - April, 2006 | ■ | | | ■ | | | ■ | | | ■ | | | ■ | | | ■ |
| May 1, 2006 - December 31, 2007 | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | | |
| **Contract role** | | | | | | | | | | | | | | | | |
| Prime/sub/supplier | ■ | ■ | ■ | | | | | | | ■ | ■ | ■ | | | | |
| Prime | | | | ■ | ■ | ■ | | | | | | | ■ | ■ | ■ | |
| Sub/supplier | | | | | | | ■ | ■ | ■ | | | | | | | ■ |
| **Small Contracts** | | | | | | | | | | | | | | | | |
| Contracts $100K or under | | | | | | | | | | | | | | | | |
| Subcontracts $100K or under and prime contract elements on contracts $100K or under | | | | | | | | | | | | | | | | |

| Figure E- : | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Funding** | | | | | | | | | | | | | | | | |
| FTA and local | | | | | | | | | | | | | | | | |
| FTA | ■ | | ■ | ■ | | ■ | ■ | | ■ | ■ | | ■ | ■ | | ■ | ■ |
| Local | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | | |
| **Type** | | | | | | | | | | | | | | | | |
| All | | | | | | | | | | | | | | | | |
| Construction | ■ | ■ | | | | | | | | | | | | | | |
| Engineering | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | | | | | |
| Goods and services | | | | | | | | | | | | ■ | ■ | ■ | ■ | ■ |
| **Time period** | | | | | | | | | | | | | | | | |
| 2003-2007 | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | | |
| January 1, 2003 - April, 2006 | | | ■ | | | ■ | | | ■ | | | ■ | | | ■ | |
| May 1, 2006 - December 31, 2007 | ■ | | | ■ | | | ■ | | | ■ | | | ■ | | | ■ |
| **Contract role** | | | | | | | | | | | | | | | | |
| Prime/sub/supplier | | | ■ | ■ | ■ | | | | | | | ■ | ■ | ■ | | |
| Prime | | | | | | ■ | ■ | ■ | | | | | | | ■ | ■ |
| Sub/supplier | ■ | ■ | | | | | | | ■ | ■ | ■ | | | | | |
| **Small Contracts** | | | | | | | | | | | | | | | | |
| Contracts $100K or under | | | | | | | | | | | | | | | | |
| Subcontracts $100K or under and prime contract elements on contracts $100K or under | | | | | | | | | | | | | | | | |

| Figure E- : | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Funding** | | | | | | | | | | | | | | | |
| FTA and local | | | | | ■ | ■ | | | | | | | | ■ | |
| FTA | | ■ | ■ | | | | ■ | ■ | ■ | ■ | ■ | | ■ | | ■ |
| Local | ■ | | | ■ | | | | | | | | ■ | | | |
| **Type** | | | | | | | | | | | | | | | |
| All | | | | | ■ | ■ | ■ | ■ | | | | | ■ | ■ | ■ |
| Construction | | | | | | | | | ■ | | | | | | |
| Engineering | | | | | | | | | | ■ | | ■ | | | |
| Goods and services | ■ | ■ | ■ | ■ | | | | | | | ■ | ■ | | | |
| **Time period** | | | | | | | | | | | | | | | |
| 2003-2007 | ■ | | | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ |
| January 1, 2003 - April, 2006 | | ■ | | | | | | | | | | | | | |
| May 1, 2006 - December 31, 2007 | | | ■ | | | | | | | | | | | | |
| **Contract role** | | | | | | | | | | | | | | | |
| Prime/sub/supplier | | | | | ■ | | | ■ | ■ | ■ | ■ | ■ | | ■ | ■ |
| Prime | ■ | | | | | ■ | ■ | | | | | | ■ | | |
| Sub/supplier | | ■ | ■ | ■ | | | | | | | | | | | |
| **Small Contracts** | | | | | | | | | | | | | | | |
| Contracts $100K or under | | | | | | ■ | ■ | | | | | | | | |
| Subcontracts $100K or under and prime contract elements on contracts $100K or under | | | | | | | | | | | | | | ■ | ■ |

**Figure E-2.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 96 | $58,692 | $58,692 | | | | |
| (2) MBE/WBE | 33 | $5,721 | $5,721 | 9.7 | 28.4 | -18.7 | 34.3 |
| (3) WBE | 11 | $401 | $401 | 0.7 | 7.1 | -6.4 | 9.7 |
| (4) MBE | 22 | $5,321 | $5,321 | 9.1 | 21.4 | -12.3 | 42.4 |
| (5) African American-owned | 3 | $129 | $129 | 0.2 | 5.8 | -5.6 | 3.8 |
| (6) Total Asian American-owned | 7 | $638 | $638 | 1.1 | 1.1 | 0.0 | 97.2 |
| (7) Asian-Pacific American-owned | 6 | $635 | $635 | 1.1 | 0.8 | 0.2 | 128.5 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.3 | -0.3 | 1.8 |
| (9) Hispanic American-owned | 12 | $4,554 | $4,554 | 7.8 | 14.2 | -6.5 | 54.5 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.2 | -0.2 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 16 | $1,708 | $1,708 | 2.9 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 0.2 | | | |
| (14) Minority-owned DBE | 12 | $1,609 | $1,609 | 2.7 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 4 | $589 | $589 | 1.0 | | | |
| (17) Asian-Pacific American-owned DBE | 4 | $589 | $589 | 1.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 7 | $902 | $902 | 1.5 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-3.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 40 | $12,269 | $12,269 | | | | |
| (2) MBE/WBE | 10 | $9,787 | $9,787 | 79.8 | 69.3 | 10.4 | 115.0 |
| (3) WBE | 2 | $107 | $107 | 0.9 | 25.2 | -24.3 | 3.5 |
| (4) MBE | 8 | $9,680 | $9,680 | 78.9 | 44.2 | 34.7 | 178.6 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 0.2 | -0.2 | 0.0 |
| (6) Total Asian American-owned | 2 | $62 | $62 | 0.5 | 0.3 | 0.2 | 150.1 |
| (7) Asian-Pacific American-owned | 2 | $62 | $62 | 0.5 | 0.2 | 0.3 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.1 | -0.1 | 0.0 |
| (9) Hispanic American-owned | 5 | $9,612 | $9,612 | 78.3 | 43.6 | 34.8 | 179.9 |
| (10) Native American-owned | 1 | $6 | $6 | 0.0 | 0.1 | 0.0 | 68.6 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $632 | $632 | 5.1 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $632 | $632 | 5.1 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 2 | $62 | $62 | 0.5 | | | |
| (17) Asian-Pacific American-owned DBE | 2 | $62 | $62 | 0.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $564 | $564 | 4.6 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-4.**
**Agency: MTS**
**Funding: Local**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 38 | $1,422 | $1,422 | | | | |
| (2) MBE/WBE | 10 | $348 | $348 | 24.5 | 41.5 | -17.0 | 58.9 |
| (3) WBE | 1 | $10 | $10 | 0.7 | 15.5 | -14.8 | 4.3 |
| (4) MBE | 9 | $338 | $338 | 23.8 | 26.0 | -2.3 | 91.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.6 | -3.6 | 0.0 |
| (6) Total Asian American-owned | 1 | $49 | $49 | 3.5 | 1.9 | 1.6 | 184.4 |
| (7) Asian-Pacific American-owned | 1 | $49 | $49 | 3.5 | 1.2 | 2.3 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.7 | -0.7 | 0.0 |
| (9) Hispanic American-owned | 6 | $276 | $276 | 19.4 | 20.5 | -1.1 | 94.8 |
| (10) Native American-owned | 2 | $13 | $13 | 0.9 | 0.1 | 0.8 | 200+ |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 6 | $287 | $287 | 20.2 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 6 | $287 | $287 | 20.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 1 | $49 | $49 | 3.5 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $49 | $49 | 3.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $225 | $225 | 15.8 | | | |
| (20) Native American-owned DBE | 2 | $13 | $13 | 0.9 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-5.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 57 | $54,783 | $54,783 | | | | |
| (2) MBE/WBE | 15 | $4,077 | $4,077 | 7.4 | 28.4 | -20.9 | 26.2 |
| (3) WBE | 6 | $274 | $274 | 0.5 | 6.9 | -6.4 | 7.3 |
| (4) MBE | 9 | $3,803 | $3,803 | 6.9 | 21.5 | -14.5 | 32.3 |
| (5) African American-owned | 1 | $118 | $118 | 0.2 | 6.1 | -5.8 | 3.5 |
| (6) Total Asian American-owned | 1 | $4 | $4 | 0.0 | 1.0 | -1.0 | 0.6 |
| (7) Asian-Pacific American-owned | 1 | $4 | $4 | 0.0 | 0.8 | -0.8 | 0.8 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.3 | -0.3 | 0.0 |
| (9) Hispanic American-owned | 7 | $3,682 | $3,682 | 6.7 | 14.3 | -7.6 | 47.0 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.1 | -0.1 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $389 | $389 | 0.7 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $389 | $389 | 0.7 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 1 | $4 | $4 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $4 | $4 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $268 | $268 | 0.5 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-6.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 40 | $12,269 | $12,269 | | | | |
| (2) MBE/WBE | 10 | $9,787 | $9,787 | 79.8 | 69.3 | 10.4 | 115.0 |
| (3) WBE | 2 | $107 | $107 | 0.9 | 25.2 | -24.3 | 3.5 |
| (4) MBE | 8 | $9,680 | $9,680 | 78.9 | 44.2 | 34.7 | 178.6 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 0.2 | -0.2 | 0.0 |
| (6) Total Asian American-owned | 2 | $62 | $62 | 0.5 | 0.3 | 0.2 | 150.1 |
| (7) Asian-Pacific American-owned | 2 | $62 | $62 | 0.5 | 0.2 | 0.3 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.1 | -0.1 | 0.0 |
| (9) Hispanic American-owned | 5 | $9,612 | $9,612 | 78.3 | 43.6 | 34.8 | 179.9 |
| (10) Native American-owned | 1 | $6 | $6 | 0.0 | 0.1 | 0.0 | 68.6 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $632 | $632 | 5.1 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $632 | $632 | 5.1 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 2 | $62 | $62 | 0.5 | | | |
| (17) Asian-Pacific American-owned DBE | 2 | $62 | $62 | 0.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $564 | $564 | 4.6 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-7.**
**Agency: MTS**
**Funding: Local**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 38 | $1,422 | $1,422 | | | | |
| (2) MBE/WBE | 10 | $348 | $348 | 24.5 | 41.5 | -17.0 | 58.9 |
| (3) WBE | 1 | $10 | $10 | 0.7 | 15.5 | -14.8 | 4.3 |
| (4) MBE | 9 | $338 | $338 | 23.8 | 26.0 | -2.3 | 91.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.6 | -3.6 | 0.0 |
| (6) Total Asian American-owned | 1 | $49 | $49 | 3.5 | 1.9 | 1.6 | 184.4 |
| (7) Asian-Pacific American-owned | 1 | $49 | $49 | 3.5 | 1.2 | 2.3 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.7 | -0.7 | 0.0 |
| (9) Hispanic American-owned | 6 | $276 | $276 | 19.4 | 20.5 | -1.1 | 94.8 |
| (10) Native American-owned | 2 | $13 | $13 | 0.9 | 0.1 | 0.8 | 200+ |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 6 | $287 | $287 | 20.2 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 6 | $287 | $287 | 20.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 1 | $49 | $49 | 3.5 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $49 | $49 | 3.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $225 | $225 | 15.8 | | | |
| (20) Native American-owned DBE | 2 | $13 | $13 | 0.9 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-8.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 39 | $3,909 | $3,909 | | | | |
| (2) MBE/WBE | 18 | $1,644 | $1,644 | 42.1 | 29.3 | 12.8 | 143.7 |
| (3) WBE | 5 | $127 | $127 | 3.2 | 9.7 | -6.5 | 33.3 |
| (4) MBE | 13 | $1,518 | $1,518 | 38.8 | 19.5 | 19.3 | 198.9 |
| (5) African American-owned | 2 | $11 | $11 | 0.3 | 1.9 | -1.6 | 14.8 |
| (6) Total Asian American-owned | 6 | $635 | $635 | 16.2 | 2.3 | 13.9 | 200+ |
| (7) Asian-Pacific American-owned | 5 | $632 | $632 | 16.2 | 1.9 | 14.3 | 200+ |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.1 | 0.4 | -0.4 | 17.5 |
| (9) Hispanic American-owned | 5 | $872 | $872 | 22.3 | 13.4 | 8.9 | 166.8 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 2.0 | -2.0 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 11 | $1,319 | $1,319 | 33.7 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 2.5 | | | |
| (14) Minority-owned DBE | 7 | $1,220 | $1,220 | 31.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 3 | $586 | $586 | 15.0 | | | |
| (17) Asian-Pacific American-owned DBE | 3 | $586 | $586 | 15.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 4 | $634 | $634 | 16.2 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-9.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-10.**
**Agency: MTS**
**Funding: Local**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-11.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 50 | $2,166 | $2,166 | | | | |
| (2) MBE/WBE | 16 | $591 | $591 | 27.3 | 33.9 | -6.6 | 80.6 |
| (3) WBE | 7 | $305 | $305 | 14.1 | 10.8 | 3.3 | 130.6 |
| (4) MBE | 9 | $287 | $287 | 13.2 | 23.1 | -9.9 | 57.3 |
| (5) African American-owned | 2 | $11 | $11 | 0.5 | 3.7 | -3.2 | 13.6 |
| (6) Total Asian American-owned | 1 | $4 | $4 | 0.2 | 3.6 | -3.4 | 5.8 |
| (7) Asian-Pacific American-owned | 1 | $4 | $4 | 0.2 | 3.2 | -3.0 | 6.4 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.3 | -0.3 | 0.0 |
| (9) Hispanic American-owned | 6 | $271 | $271 | 12.5 | 14.3 | -1.8 | 87.3 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 1.4 | -1.4 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $239 | $239 | 11.0 | | | |
| (13) Woman-owned DBE | 2 | $10 | $10 | 0.4 | | | |
| (14) Minority-owned DBE | 3 | $229 | $229 | 10.6 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $229 | $229 | 10.6 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-12.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 20 | $424 | $424 | | | | |
| (2) MBE/WBE | 4 | $125 | $125 | 29.4 | 29.6 | -0.1 | 99.5 |
| (3) WBE | 1 | $10 | $10 | 2.4 | 8.8 | -6.5 | 26.7 |
| (4) MBE | 3 | $115 | $115 | 27.1 | 20.7 | 6.3 | 130.5 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 2 | $62 | $62 | 14.5 | 3.3 | 11.2 | 200+ |
| (7) Asian-Pacific American-owned | 2 | $62 | $62 | 14.5 | 2.8 | 11.7 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.5 | -0.5 | 0.0 |
| (9) Hispanic American-owned | 1 | $53 | $53 | 12.5 | 13.7 | -1.2 | 91.4 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.6 | -0.6 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 2 | $62 | $62 | 14.5 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (17) Asian-Pacific American-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-13.**
**Agency: MTS**
**Funding: Local**
**Type: Construction**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 15 | $243 | $243 | | | | |
| (2) MBE/WBE | 4 | $65 | $65 | 26.9 | 36.9 | -10.0 | 72.8 |
| (3) WBE | 1 | $10 | $10 | 3.9 | 11.3 | -7.3 | 34.8 |
| (4) MBE | 3 | $56 | $56 | 22.9 | 25.6 | -2.7 | 89.6 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 6.1 | -6.1 | 0.0 |
| (6) Total Asian American-owned | 1 | $49 | $49 | 20.3 | 4.7 | 15.6 | 200+ |
| (7) Asian-Pacific American-owned | 1 | $49 | $49 | 20.3 | 3.8 | 16.5 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (9) Hispanic American-owned | 2 | $6 | $6 | 2.7 | 14.3 | -11.7 | 18.6 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.5 | -0.5 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $49 | $49 | 20.3 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-14.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 25 | $1,600 | $1,600 | | | | |
| (2) MBE/WBE | 8 | $483 | $483 | 30.2 | 32.3 | -2.2 | 93.3 |
| (3) WBE | 4 | $267 | $267 | 16.7 | 10.3 | 6.3 | 161.4 |
| (4) MBE | 4 | $216 | $216 | 13.5 | 22.0 | -8.5 | 61.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.8 | -3.8 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 3.4 | -3.4 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 3.0 | -3.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.3 | -0.3 | 0.0 |
| (9) Hispanic American-owned | 4 | $216 | $216 | 13.5 | 13.6 | -0.1 | 99.1 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 1.2 | -1.2 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $174 | $174 | 10.9 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $174 | $174 | 10.9 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 1 | $174 | $174 | 10.9 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-15.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 20 | $424 | $424 | | | | |
| (2) MBE/WBE | 4 | $125 | $125 | 29.4 | 29.6 | -0.1 | 99.5 |
| (3) WBE | 1 | $10 | $10 | 2.4 | 8.8 | -6.5 | 26.7 |
| (4) MBE | 3 | $115 | $115 | 27.1 | 20.7 | 6.3 | 130.5 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 2 | $62 | $62 | 14.5 | 3.3 | 11.2 | 200+ |
| (7) Asian-Pacific American-owned | 2 | $62 | $62 | 14.5 | 2.8 | 11.7 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.5 | -0.5 | 0.0 |
| (9) Hispanic American-owned | 1 | $53 | $53 | 12.5 | 13.7 | -1.2 | 91.4 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.6 | -0.6 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 2 | $62 | $62 | 14.5 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (17) Asian-Pacific American-owned DBE | 2 | $62 | $62 | 14.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-16.**
**Agency: MTS**
**Funding: Local**
**Type: Construction**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 15 | $243 | $243 | | | | |
| (2) MBE/WBE | 4 | $65 | $65 | 26.9 | 36.9 | -10.0 | 72.8 |
| (3) WBE | 1 | $10 | $10 | 3.9 | 11.3 | -7.3 | 34.8 |
| (4) MBE | 3 | $56 | $56 | 22.9 | 25.6 | -2.7 | 89.6 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 6.1 | -6.1 | 0.0 |
| (6) Total Asian American-owned | 1 | $49 | $49 | 20.3 | 4.7 | 15.6 | 200+ |
| (7) Asian-Pacific American-owned | 1 | $49 | $49 | 20.3 | 3.8 | 16.5 | 200+ |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (9) Hispanic American-owned | 2 | $6 | $6 | 2.7 | 14.3 | -11.7 | 18.6 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.5 | -0.5 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $49 | $49 | 20.3 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $49 | $49 | 20.3 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-17.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 25 | $566 | $566 | | | | |
| (2) MBE/WBE | 8 | $109 | $109 | 19.2 | 38.3 | -19.1 | 50.2 |
| (3) WBE | 3 | $38 | $38 | 6.7 | 12.0 | -5.3 | 55.8 |
| (4) MBE | 5 | $71 | $71 | 12.5 | 26.3 | -13.8 | 47.7 |
| (5) African American-owned | 2 | $11 | $11 | 2.0 | 3.6 | -1.7 | 53.8 |
| (6) Total Asian American-owned | 1 | $4 | $4 | 0.8 | 4.1 | -3.3 | 19.5 |
| (7) Asian-Pacific American-owned | 1 | $4 | $4 | 0.8 | 3.8 | -3.0 | 20.8 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.3 | -0.3 | 0.0 |
| (9) Hispanic American-owned | 2 | $55 | $55 | 9.8 | 16.4 | -6.6 | 59.5 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 2.2 | -2.2 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 4 | $65 | $65 | 11.5 | | | |
| (13) Woman-owned DBE | 2 | $10 | $10 | 1.7 | | | |
| (14) Minority-owned DBE | 2 | $55 | $55 | 9.8 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $55 | $55 | 9.8 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-18.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-19.**
**Agency: MTS**
**Funding: Local**
**Type: Construction**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-20.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 31 | $8,166 | $8,166 | | | | |
| (2) MBE/WBE | 13 | $1,546 | $1,546 | 18.9 | 26.4 | -7.4 | 71.9 |
| (3) WBE | 4 | $96 | $96 | 1.2 | 8.7 | -7.6 | 13.5 |
| (4) MBE | 9 | $1,450 | $1,450 | 17.8 | 17.6 | 0.1 | 100.8 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 2.1 | -2.1 | 0.0 |
| (6) Total Asian American-owned | 6 | $634 | $634 | 7.8 | 7.0 | 0.8 | 111.2 |
| (7) Asian-Pacific American-owned | 5 | $631 | $631 | 7.7 | 5.2 | 2.6 | 149.6 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 1.8 | -1.8 | 2.0 |
| (9) Hispanic American-owned | 3 | $816 | $816 | 10.0 | 7.5 | 2.5 | 132.5 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 8 | $1,257 | $1,257 | 15.4 | | | |
| (13) Woman-owned DBE | 2 | $89 | $89 | 1.1 | | | |
| (14) Minority-owned DBE | 6 | $1,168 | $1,168 | 14.3 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 4 | $589 | $589 | 7.2 | | | |
| (17) Asian-Pacific American-owned DBE | 4 | $589 | $589 | 7.2 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $579 | $579 | 7.1 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-21.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 6 | $178 | $178 | | | | |
| (2) MBE/WBE | 2 | $102 | $102 | 57.0 | 33.8 | 23.2 | 168.7 |
| (3) WBE | 1 | $97 | $97 | 54.6 | 11.8 | 42.8 | 200+ |
| (4) MBE | 1 | $4 | $4 | 2.4 | 22.0 | -19.6 | 10.8 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 11.9 | -11.9 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 7.6 | -7.6 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 4.3 | -4.3 | 0.0 |
| (9) Hispanic American-owned | 1 | $4 | $4 | 2.4 | 6.2 | -3.8 | 38.7 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $4 | $4 | 2.4 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $4 | $4 | 2.4 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 1 | $4 | $4 | 2.4 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-22.**
**Agency: MTS**
**Funding: Local**
**Type: Engineering**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 5 | $112 | $112 | | | | |
| (2) MBE/WBE | 0 | $0 | $0 | 0.0 | 32.9 | -32.9 | 0.0 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 14.1 | -14.1 | 0.0 |
| (4) MBE | 0 | $0 | $0 | 0.0 | 18.7 | -18.7 | 0.0 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 10.2 | -10.2 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 7.0 | -7.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (9) Hispanic American-owned | 0 | $0 | $0 | 0.0 | 5.0 | -5.0 | 0.0 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 0 | $0 | $0 | 0.0 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-23.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 17 | $4,823 | $4,823 | | | | |
| (2) MBE/WBE | 3 | $11 | $11 | 0.2 | 25.4 | -25.2 | 0.9 |
| (3) WBE | 2 | $7 | $7 | 0.1 | 8.3 | -8.2 | 1.8 |
| (4) MBE | 1 | $4 | $4 | 0.1 | 17.1 | -17.0 | 0.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 2.5 | -2.5 | 0.0 |
| (6) Total Asian American-owned | 1 | $4 | $4 | 0.1 | 10.4 | -10.4 | 0.7 |
| (7) Asian-Pacific American-owned | 1 | $4 | $4 | 0.1 | 7.7 | -7.6 | 0.9 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 2.7 | -2.7 | 0.0 |
| (9) Hispanic American-owned | 0 | $0 | $0 | 0.0 | 3.9 | -3.9 | 0.0 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.3 | -0.3 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $4 | $4 | 0.1 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $4 | $4 | 0.1 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 1 | $4 | $4 | 0.1 | | | |
| (17) Asian-Pacific American-owned DBE | 1 | $4 | $4 | 0.1 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-24.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 6 | $178 | $178 | | | | |
| (2) MBE/WBE | 2 | $102 | $102 | 57.0 | 33.8 | 23.2 | 168.7 |
| (3) WBE | 1 | $97 | $97 | 54.6 | 11.8 | 42.8 | 200+ |
| (4) MBE | 1 | $4 | $4 | 2.4 | 22.0 | -19.6 | 10.8 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 11.9 | -11.9 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 7.6 | -7.6 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 4.3 | -4.3 | 0.0 |
| (9) Hispanic American-owned | 1 | $4 | $4 | 2.4 | 6.2 | -3.8 | 38.7 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 1 | $4 | $4 | 2.4 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 1 | $4 | $4 | 2.4 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 1 | $4 | $4 | 2.4 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-25.**
**Agency: MTS**
**Funding: Local**
**Type: Engineering**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 5 | $112 | $112 | | | | |
| (2) MBE/WBE | 0 | $0 | $0 | 0.0 | 32.9 | -32.9 | 0.0 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 14.1 | -14.1 | 0.0 |
| (4) MBE | 0 | $0 | $0 | 0.0 | 18.7 | -18.7 | 0.0 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 10.2 | -10.2 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 7.0 | -7.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 3.1 | -3.1 | 0.0 |
| (9) Hispanic American-owned | 0 | $0 | $0 | 0.0 | 5.0 | -5.0 | 0.0 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 0 | $0 | $0 | 0.0 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-26.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 14 | $3,343 | $3,343 | | | | |
| (2) MBE/WBE | 10 | $1,536 | $1,536 | 45.9 | 27.7 | 18.2 | 165.6 |
| (3) WBE | 2 | $89 | $89 | 2.7 | 9.4 | -6.7 | 28.4 |
| (4) MBE | 8 | $1,447 | $1,447 | 43.3 | 18.4 | 24.9 | 200+ |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 1.6 | -1.6 | 0.0 |
| (6) Total Asian American-owned | 5 | $630 | $630 | 18.9 | 2.0 | 16.9 | 200+ |
| (7) Asian-Pacific American-owned | 4 | $627 | $627 | 18.8 | 1.5 | 17.2 | 200+ |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.1 | 0.5 | -0.4 | 19.2 |
| (9) Hispanic American-owned | 3 | $816 | $816 | 24.4 | 12.9 | 11.6 | 190.0 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 1.9 | -1.9 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 7 | $1,254 | $1,254 | 37.5 | | | |
| (13) Woman-owned DBE | 2 | $89 | $89 | 2.7 | | | |
| (14) Minority-owned DBE | 5 | $1,165 | $1,165 | 34.8 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 3 | $586 | $586 | 17.5 | | | |
| (17) Asian-Pacific American-owned DBE | 3 | $586 | $586 | 17.5 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $579 | $579 | 17.3 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-27.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-28.**
**Agency: MTS**
**Funding: Local**
**Type: Engineering**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-29.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 15 | $48,360 | $48,360 | | | | |
| (2) MBE/WBE | 4 | $3,584 | $3,584 | 7.4 | 28.5 | -21.1 | 26.0 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 6.6 | -6.6 | 0.0 |
| (4) MBE | 4 | $3,584 | $3,584 | 7.4 | 21.9 | -14.5 | 33.8 |
| (5) African American-owned | 1 | $118 | $118 | 0.2 | 6.5 | -6.2 | 3.7 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (9) Hispanic American-owned | 3 | $3,466 | $3,466 | 7.2 | 15.4 | -8.2 | 46.6 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 3 | $212 | $212 | 0.4 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 3 | $212 | $212 | 0.4 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $94 | $94 | 0.2 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-30.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 14 | $11,667 | $11,667 | | | | |
| (2) MBE/WBE | 4 | $9,561 | $9,561 | 81.9 | 71.3 | 10.6 | 114.9 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 26.0 | -26.0 | 0.0 |
| (4) MBE | 4 | $9,561 | $9,561 | 81.9 | 45.4 | 36.6 | 180.7 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 0.1 | -0.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (9) Hispanic American-owned | 3 | $9,555 | $9,555 | 81.9 | 45.2 | 36.7 | 181.1 |
| (10) Native American-owned | 1 | $6 | $6 | 0.1 | 0.0 | 0.0 | 138.5 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 2 | $566 | $566 | 4.9 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 2 | $566 | $566 | 4.9 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 1 | $560 | $560 | 4.8 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.1 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-31.**
**Agency: MTS**
**Funding: Local**
**Type: Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 18 | $1,066 | $1,066 | | | | |
| (2) MBE/WBE | 6 | $282 | $282 | 26.5 | 43.5 | -17.0 | 60.9 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 16.6 | -16.6 | 0.0 |
| (4) MBE | 6 | $282 | $282 | 26.5 | 26.9 | -0.4 | 98.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.0 | -3.0 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 100.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (9) Hispanic American-owned | 4 | $269 | $269 | 25.2 | 23.5 | 1.8 | 107.5 |
| (10) Native American-owned | 2 | $13 | $13 | 1.2 | 0.0 | 1.2 | 200+ |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $238 | $238 | 22.3 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $238 | $238 | 22.3 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $225 | $225 | 21.1 | | | |
| (20) Native American-owned DBE | 2 | $13 | $13 | 1.2 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-32.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 15 | $48,360 | $48,360 | | | | |
| (2) MBE/WBE | 4 | $3,584 | $3,584 | 7.4 | 28.5 | -21.1 | 26.0 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 6.6 | -6.6 | 0.0 |
| (4) MBE | 4 | $3,584 | $3,584 | 7.4 | 21.9 | -14.5 | 33.8 |
| (5) African American-owned | 1 | $118 | $118 | 0.2 | 6.5 | -6.2 | 3.7 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (9) Hispanic American-owned | 3 | $3,466 | $3,466 | 7.2 | 15.4 | -8.2 | 46.6 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 3 | $212 | $212 | 0.4 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 3 | $212 | $212 | 0.4 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 2 | $94 | $94 | 0.2 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-33.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 14 | $11,667 | $11,667 | | | | |
| (2) MBE/WBE | 4 | $9,561 | $9,561 | 81.9 | 71.3 | 10.6 | 114.9 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 26.0 | -26.0 | 0.0 |
| (4) MBE | 4 | $9,561 | $9,561 | 81.9 | 45.4 | 36.6 | 180.7 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 0.1 | -0.1 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (9) Hispanic American-owned | 3 | $9,555 | $9,555 | 81.9 | 45.2 | 36.7 | 181.1 |
| (10) Native American-owned | 1 | $6 | $6 | 0.1 | 0.0 | 0.0 | 138.5 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 2 | $566 | $566 | 4.9 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 2 | $566 | $566 | 4.9 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 1 | $560 | $560 | 4.8 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.1 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-34.**
**Agency: MTS**
**Funding: Local**
**Type: Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 18 | $1,066 | $1,066 | | | | |
| (2) MBE/WBE | 6 | $282 | $282 | 26.5 | 43.5 | -17.0 | 60.9 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 16.6 | -16.6 | 0.0 |
| (4) MBE | 6 | $282 | $282 | 26.5 | 26.9 | -0.4 | 98.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.0 | -3.0 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 100.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (9) Hispanic American-owned | 4 | $269 | $269 | 25.2 | 23.5 | 1.8 | 107.5 |
| (10) Native American-owned | 2 | $13 | $13 | 1.2 | 0.0 | 1.2 | 200+ |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $238 | $238 | 22.3 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $238 | $238 | 22.3 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $225 | $225 | 21.1 | | | |
| (20) Native American-owned DBE | 2 | $13 | $13 | 1.2 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-35.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: January 1, 2003 - April 30, 2006**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-36.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: May 1, 2006 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 0 | $0 | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-37.**
**Agency: MTS**
**Funding: Local**
**Type: Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Subcontractors and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | | | | | | | |
| (2) MBE/WBE | | | | | | | |
| (3) WBE | | | | | | | |
| (4) MBE | | | | | | | |
| (5) African American-owned | | | | | | | |
| (6) Total Asian American-owned | | | | | | | |
| (7) Asian-Pacific American-owned | | | | | | | |
| (8) Subcontinent Asian American-owned | | | | | | | |
| (9) Hispanic American-owned | | | | | | | |
| (10) Native American-owned | | | | | | | |
| (11) Unknown MBE | | | | | | | |
| (12) DBE-certified | | | | | | | |
| (13) Woman-owned DBE | | | | | | | |
| (14) Minority-owned DBE | | | | | | | |
| (15) African American-owned DBE | | | | | | | |
| (16) Total Asian American-owned DBE | | | | | | | |
| (17) Asian-Pacific American-owned DBE | | | | | | | |
| (18) Subcontinent Asian American-owned DBE | | | | | | | |
| (19) Hispanic American-owned DBE | | | | | | | |
| (20) Native American-owned DBE | | | | | | | |
| (21) Unknown DBE-MBE | | | | | | | |
| (22) White male-owned DBE | | | | | | | |
| (23) Unknown DBE | | | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-38.**
**Agency: MTS**
**Funding: All**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 174 | $72,382 | $72,382 | | | | |
| (2) MBE/WBE | 53 | $15,856 | $15,856 | 21.9 | 35.6 | -13.7 | 61.5 |
| (3) WBE | 14 | $517 | $517 | 0.7 | 10.3 | -9.6 | 6.9 |
| (4) MBE | 39 | $15,338 | $15,338 | 21.2 | 25.3 | -4.1 | 83.7 |
| (5) African American-owned | 3 | $129 | $129 | 0.2 | 4.8 | -4.6 | 3.7 |
| (6) Total Asian American-owned | 10 | $749 | $749 | 1.0 | 1.0 | 0.0 | 103.4 |
| (7) Asian-Pacific American-owned | 9 | $746 | $746 | 1.0 | 0.7 | 0.3 | 137.9 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.3 | -0.2 | 1.6 |
| (9) Hispanic American-owned | 23 | $14,441 | $14,441 | 20.0 | 19.3 | 0.6 | 103.2 |
| (10) Native American-owned | 3 | $19 | $19 | 0.0 | 0.2 | -0.2 | 14.1 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 27 | $2,627 | $2,627 | 3.6 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 0.1 | | | |
| (14) Minority-owned DBE | 23 | $2,528 | $2,528 | 3.5 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 7 | $700 | $700 | 1.0 | | | |
| (17) Asian-Pacific American-owned DBE | 7 | $700 | $700 | 1.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 12 | $1,692 | $1,692 | 2.3 | | | |
| (20) Native American-owned DBE | 3 | $19 | $19 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-39.** **Small Contracts $100k and Under**
**Agency: MTS**
**Funding: All**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 111 | $2,428 | $2,428 | | | | |
| (2) MBE/WBE | 28 | $765 | $765 | 31.5 | 37.3 | -5.8 | 84.5 |
| (3) WBE | 8 | $163 | $163 | 6.7 | 11.9 | -5.2 | 56.4 |
| (4) MBE | 20 | $603 | $603 | 24.8 | 25.4 | -0.6 | 97.6 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 4.6 | -4.6 | 0.0 |
| (6) Total Asian American-owned | 4 | $114 | $114 | 4.7 | 4.7 | 0.0 | 100.0 |
| (7) Asian-Pacific American-owned | 4 | $114 | $114 | 4.7 | 3.1 | 1.6 | 152.4 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 1.6 | -1.6 | 0.0 |
| (9) Hispanic American-owned | 13 | $469 | $469 | 19.3 | 15.5 | 3.9 | 125.0 |
| (10) Native American-owned | 3 | $19 | $19 | 0.8 | 0.7 | 0.1 | 113.5 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 13 | $457 | $457 | 18.8 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 13 | $457 | $457 | 18.8 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 4 | $114 | $114 | 4.7 | | | |
| (17) Asian-Pacific American-owned DBE | 4 | $114 | $114 | 4.7 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 6 | $323 | $323 | 13.3 | | | |
| (20) Native American-owned DBE | 3 | $19 | $19 | 0.8 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-40.** **Small Contracts $100k and Under**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 76 | $1,613 | $1,613 | | | | |
| (2) MBE/WBE | 18 | $418 | $418 | 25.9 | 34.6 | -8.7 | 74.8 |
| (3) WBE | 7 | $153 | $153 | 9.5 | 11.8 | -2.3 | 80.6 |
| (4) MBE | 11 | $264 | $264 | 16.4 | 22.8 | -6.4 | 71.8 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.7 | -3.7 | 0.0 |
| (6) Total Asian American-owned | 3 | $65 | $65 | 4.0 | 5.4 | -1.4 | 74.3 |
| (7) Asian-Pacific American-owned | 3 | $65 | $65 | 4.0 | 3.6 | 0.4 | 112.4 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 1.8 | -1.8 | 0.0 |
| (9) Hispanic American-owned | 7 | $194 | $194 | 12.0 | 12.7 | -0.7 | 94.1 |
| (10) Native American-owned | 1 | $6 | $6 | 0.4 | 0.9 | -0.6 | 39.1 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 7 | $169 | $169 | 10.5 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 7 | $169 | $169 | 10.5 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 3 | $65 | $65 | 4.0 | | | |
| (17) Asian-Pacific American-owned DBE | 3 | $65 | $65 | 4.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $98 | $98 | 6.1 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.4 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-41.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 136 | $70,961 | $70,961 | | | | |
| (2) MBE/WBE | 43 | $15,508 | $15,508 | 21.9 | 35.5 | -13.6 | 61.6 |
| (3) WBE | 13 | $508 | $508 | 0.7 | 10.2 | -9.5 | 7.0 |
| (4) MBE | 30 | $15,000 | $15,000 | 21.1 | 25.3 | -4.2 | 83.6 |
| (5) African American-owned | 3 | $129 | $129 | 0.2 | 4.8 | -4.6 | 3.8 |
| (6) Total Asian American-owned | 9 | $700 | $700 | 1.0 | 1.0 | 0.0 | 100.3 |
| (7) Asian-Pacific American-owned | 8 | $697 | $697 | 1.0 | 0.7 | 0.2 | 133.0 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.2 | -0.2 | 1.7 |
| (9) Hispanic American-owned | 17 | $14,166 | $14,166 | 20.0 | 19.3 | 0.7 | 103.4 |
| (10) Native American-owned | 1 | $6 | $6 | 0.0 | 0.2 | -0.2 | 4.4 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 21 | $2,339 | $2,339 | 3.3 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 0.1 | | | |
| (14) Minority-owned DBE | 17 | $2,241 | $2,241 | 3.2 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 6 | $651 | $651 | 0.9 | | | |
| (17) Asian-Pacific American-owned DBE | 6 | $651 | $651 | 0.9 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 9 | $1,467 | $1,467 | 2.1 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-42.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 70 | $2,589 | $2,589 | | | | |
| (2) MBE/WBE | 20 | $716 | $716 | 27.6 | 33.2 | -5.5 | 83.4 |
| (3) WBE | 8 | $315 | $315 | 12.2 | 10.5 | 1.7 | 116.2 |
| (4) MBE | 12 | $401 | $401 | 15.5 | 22.7 | -7.2 | 68.2 |
| (5) African American-owned | 2 | $11 | $11 | 0.4 | 3.6 | -3.2 | 11.7 |
| (6) Total Asian American-owned | 3 | $66 | $66 | 2.6 | 3.5 | -1.0 | 72.3 |
| (7) Asian-Pacific American-owned | 3 | $66 | $66 | 2.6 | 3.2 | -0.6 | 80.3 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.4 | -0.4 | 0.0 |
| (9) Hispanic American-owned | 7 | $324 | $324 | 12.5 | 14.2 | -1.7 | 87.9 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 1.3 | -1.3 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 7 | $300 | $300 | 11.6 | | | |
| (13) Woman-owned DBE | 2 | $10 | $10 | 0.4 | | | |
| (14) Minority-owned DBE | 5 | $291 | $291 | 11.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 2 | $62 | $62 | 2.4 | | | |
| (17) Asian-Pacific American-owned DBE | 2 | $62 | $62 | 2.4 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $229 | $229 | 8.8 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-43.**
**Agency: MTS**
**Funding: FTA**
**Type: Engineering**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 37 | $8,345 | $8,345 | | | | |
| (2) MBE/WBE | 15 | $1,648 | $1,648 | 19.7 | 26.5 | -6.8 | 74.5 |
| (3) WBE | 5 | $193 | $193 | 2.3 | 8.8 | -6.5 | 26.3 |
| (4) MBE | 10 | $1,455 | $1,455 | 17.4 | 17.7 | -0.3 | 98.4 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 2.2 | -2.2 | 0.0 |
| (6) Total Asian American-owned | 6 | $634 | $634 | 7.6 | 7.1 | 0.5 | 107.2 |
| (7) Asian-Pacific American-owned | 5 | $631 | $631 | 7.6 | 5.2 | 2.3 | 144.9 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 1.9 | -1.8 | 1.9 |
| (9) Hispanic American-owned | 4 | $821 | $821 | 9.8 | 7.5 | 2.3 | 130.9 |
| (10) Native American-owned | 0 | $0 | $0 | 0.0 | 0.9 | -0.9 | 0.0 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 9 | $1,261 | $1,261 | 15.1 | | | |
| (13) Woman-owned DBE | 2 | $89 | $89 | 1.1 | | | |
| (14) Minority-owned DBE | 7 | $1,172 | $1,172 | 14.1 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 4 | $589 | $589 | 7.1 | | | |
| (17) Asian-Pacific American-owned DBE | 4 | $589 | $589 | 7.1 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $583 | $583 | 7.0 | | | |
| (20) Native American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-44.**
**Agency: MTS**
**Funding: FTA**
**Type: Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 29 | $60,027 | $60,027 | | | | |
| (2) MBE/WBE | 8 | $13,144 | $13,144 | 21.9 | 36.9 | -15.0 | 59.4 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 10.4 | -10.4 | 0.0 |
| (4) MBE | 8 | $13,144 | $13,144 | 21.9 | 26.5 | -4.6 | 82.7 |
| (5) African American-owned | 1 | $118 | $118 | 0.2 | 5.2 | -5.0 | 3.7 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.0 | 0.0 | 0.0 |
| (9) Hispanic American-owned | 6 | $13,021 | $13,021 | 21.7 | 21.2 | 0.5 | 102.5 |
| (10) Native American-owned | 1 | $6 | $6 | 0.0 | 0.0 | 0.0 | 29.6 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $778 | $778 | 1.3 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $778 | $778 | 1.3 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $654 | $654 | 1.1 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-45.**
**Agency: MTS**
**Funding: Local**
**Type: Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 23 | $1,178 | $1,178 | | | | |
| (2) MBE/WBE | 6 | $282 | $282 | 24.0 | 42.4 | -18.5 | 56.4 |
| (3) WBE | 0 | $0 | $0 | 0.0 | 16.3 | -16.3 | 0.0 |
| (4) MBE | 6 | $282 | $282 | 24.0 | 26.1 | -2.2 | 91.7 |
| (5) African American-owned | 0 | $0 | $0 | 0.0 | 3.0 | -3.0 | 0.0 |
| (6) Total Asian American-owned | 0 | $0 | $0 | 0.0 | 1.3 | -1.3 | 0.0 |
| (7) Asian-Pacific American-owned | 0 | $0 | $0 | 0.0 | 0.7 | -0.7 | 0.0 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.6 | -0.6 | 0.0 |
| (9) Hispanic American-owned | 4 | $269 | $269 | 22.8 | 21.7 | 1.1 | 105.1 |
| (10) Native American-owned | 2 | $13 | $13 | 1.1 | 0.0 | 1.1 | 200+ |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 5 | $238 | $238 | 20.2 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 5 | $238 | $238 | 20.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (17) Asian-Pacific American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 3 | $225 | $225 | 19.1 | | | |
| (20) Native American-owned DBE | 2 | $13 | $13 | 1.1 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-46.**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 97 | $67,052 | $67,052 | | | | |
| (2) MBE/WBE | 25 | $13,864 | $13,864 | 20.7 | 35.9 | -15.2 | 57.7 |
| (3) WBE | 8 | $381 | $381 | 0.6 | 10.2 | -9.7 | 5.6 |
| (4) MBE | 17 | $13,483 | $13,483 | 20.1 | 25.6 | -5.5 | 78.4 |
| (5) African American-owned | 1 | $118 | $118 | 0.2 | 5.0 | -4.8 | 3.5 |
| (6) Total Asian American-owned | 3 | $65 | $65 | 0.1 | 0.9 | -0.8 | 10.7 |
| (7) Asian-Pacific American-owned | 3 | $65 | $65 | 0.1 | 0.7 | -0.6 | 14.4 |
| (8) Subcontinent Asian American-owned | 0 | $0 | $0 | 0.0 | 0.2 | -0.2 | 0.0 |
| (9) Hispanic American-owned | 12 | $13,294 | $13,294 | 19.8 | 19.7 | 0.2 | 100.9 |
| (10) Native American-owned | 1 | $6 | $6 | 0.0 | 0.1 | -0.1 | 10.4 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 10 | $1,021 | $1,021 | 1.5 | | | |
| (13) Woman-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (14) Minority-owned DBE | 10 | $1,021 | $1,021 | 1.5 | | | |
| (15) African American-owned DBE | 1 | $118 | $118 | 0.2 | | | |
| (16) Total Asian American-owned DBE | 3 | $65 | $65 | 0.1 | | | |
| (17) Asian-Pacific American-owned DBE | 3 | $65 | $65 | 0.1 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 5 | $832 | $832 | 1.2 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.0 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-47.** **Contracts and Subcontracts $100k and Under**
**Agency: MTS**
**Funding: All**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 146 | $11,097 | $11,097 | | | | |
| (2) MBE/WBE | 45 | $8,928 | $8,928 | 80.5 | 34.6 | 45.9 | 200+ |
| (3) WBE | 13 | $290 | $290 | 2.6 | 3.5 | -0.8 | 75.4 |
| (4) MBE | 32 | $8,638 | $8,638 | 77.8 | 31.1 | 46.7 | 200+ |
| (5) African American-owned | 2 | $11 | $11 | 0.1 | 1.3 | -1.2 | 7.9 |
| (6) Total Asian American-owned | 9 | $208 | $208 | 1.9 | 1.5 | 0.4 | 127.3 |
| (7) Asian-Pacific American-owned | 8 | $205 | $205 | 1.9 | 1.0 | 0.8 | 178.9 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.4 | -0.4 | 6.1 |
| (9) Hispanic American-owned | 18 | $8,400 | $8,400 | 75.7 | 28.1 | 47.6 | 200+ |
| (10) Native American-owned | 3 | $19 | $19 | 0.2 | 0.3 | -0.1 | 55.6 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 22 | $679 | $679 | 6.1 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 0.9 | | | |
| (14) Minority-owned DBE | 18 | $580 | $580 | 5.2 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 6 | $159 | $159 | 1.4 | | | |
| (17) Asian-Pacific American-owned DBE | 6 | $159 | $159 | 1.4 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 9 | $402 | $402 | 3.6 | | | |
| (20) Native American-owned DBE | 3 | $19 | $19 | 0.2 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

**Figure E-48.** **Contracts and Subcontracts $100k and Under**
**Agency: MTS**
**Funding: FTA**
**Type: Construction, Engineering, Goods and Services**
**Time Period: January 1, 2003 - December 31, 2007**
**Role: Prime contractors, Subcontractors, and Suppliers**

| Firm Type | (a) Number of contracts (subcontracts) | (b) Total dollars (thousands) | (c) Total dollars after Unknown MBE allocation (thousands)* | (d) Actual utilization (column c / column c, row1) % | (e) Utilization benchmark (availability) % | (f) Difference (column d - column e) % | (g) Disparity index (d / e) x 100 |
|---|---|---|---|---|---|---|---|
| (1) All firms | 111 | $10,281 | $10,281 | | | | |
| (2) MBE/WBE | 35 | $8,580 | $8,580 | 83.5 | 33.9 | 49.5 | 200+ |
| (3) WBE | 12 | $280 | $280 | 2.7 | 2.8 | -0.1 | 98.1 |
| (4) MBE | 23 | $8,300 | $8,300 | 80.7 | 31.1 | 49.6 | 200+ |
| (5) African American-owned | 2 | $11 | $11 | 0.1 | 0.9 | -0.8 | 12.5 |
| (6) Total Asian American-owned | 8 | $159 | $159 | 1.5 | 1.3 | 0.2 | 116.1 |
| (7) Asian-Pacific American-owned | 7 | $156 | $156 | 1.5 | 1.0 | 0.6 | 159.8 |
| (8) Subcontinent Asian American-owned | 1 | $3 | $3 | 0.0 | 0.4 | -0.4 | 7.6 |
| (9) Hispanic American-owned | 12 | $8,124 | $8,124 | 79.0 | 28.6 | 50.4 | 200+ |
| (10) Native American-owned | 1 | $6 | $6 | 0.1 | 0.3 | -0.3 | 18.1 |
| (11) Unknown MBE | 0 | $0 | | | | | |
| (12) DBE-certified | 16 | $391 | $391 | 3.8 | | | |
| (13) Woman-owned DBE | 4 | $99 | $99 | 1.0 | | | |
| (14) Minority-owned DBE | 12 | $293 | $293 | 2.8 | | | |
| (15) African American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (16) Total Asian American-owned DBE | 5 | $110 | $110 | 1.1 | | | |
| (17) Asian-Pacific American-owned DBE | 5 | $110 | $110 | 1.1 | | | |
| (18) Subcontinent Asian American-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (19) Hispanic American-owned DBE | 6 | $177 | $177 | 1.7 | | | |
| (20) Native American-owned DBE | 1 | $6 | $6 | 0.1 | | | |
| (21) Unknown DBE-MBE | 0 | $0 | | | | | |
| (22) White male-owned DBE | 0 | $0 | $0 | 0.0 | | | |
| (23) Unknown DBE | 0 | $0 | | | | | |

Note: Spreadsheet rounds numbers to nearest thousand dollars or tenth of one percent. WBE is white women-owned firms.

* Unknown MBE, Unknown DBE-MBE, and Unknown DBE dollars were allocated to MBE subgroups proportional to the known total dollars of those groups. For example, if total dollars of African American-owned firms (column b, row 5) accounted for 25 percent of total MBE dollars (column b, row 4), then 25 percent of column b, row 11 would be added to column b, row 5 and the sum would be shown in column c, row 5.

# APPENDIX F.
# Entry and Advancement in the Construction and Engineering Industries

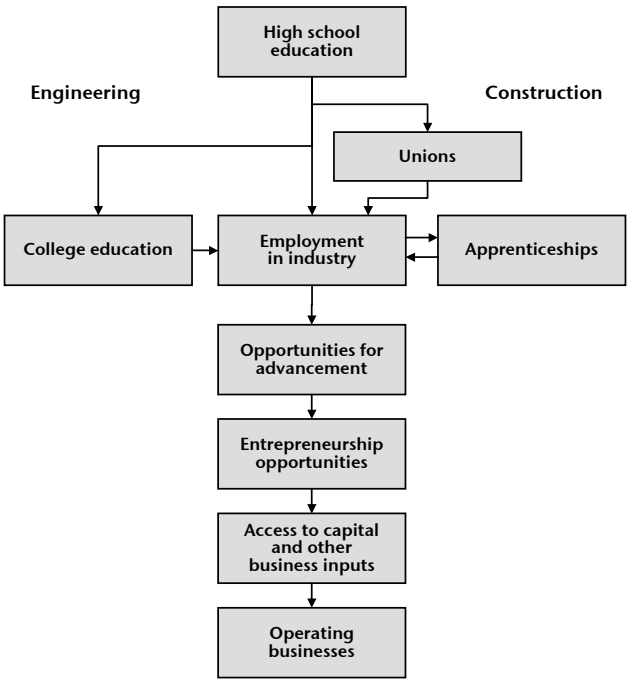
# APPENDIX F.
# Entry and Advancement in the Construction and Engineering Industries

Federal courts have found Congress "spent decades compiling evidence of race discrimination in government highway contracting, of barriers to the formation of minority-owned construction businesses, and of barriers to entry."[1] Congress found that discrimination had impeded the formation of qualified minority business enterprises.

BBC examined whether some of these barriers to entry found for the nation as a whole also appear to occur in Southern California and, where data were available, in San Diego County.[2] One potential source of barriers is entry and advancement in the construction and engineering industries. This Appendix uses 2000 Census data and newly-released data to analyze education, employment and workplace advancement, all factors that may ultimately influence business formation. BBC separately studied where there are barriers to entry for construction and for engineering, as entrance requirements and opportunities for advancement differ for these two industries. Figure F-1 outlines the steps along the path to business formation for these industries. Appendix F reviews entry and advancement of employees in these industries, business formation is examined in Appendix G and access to capital is discussed in Appendix H. Business success is addressed in Appendix I. Appendix J discusses data sources.

**Figure F-1.**
**Model for studying entry into the industry**

Source:
BBC Research & Consulting.




[1] *Sherbrooke Turf, Inc.*, 345 F.3d at 970, (citing *Adarand Constructors, Inc.*, 228 F.3d at 1167 – 76); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005) at 992.

[2] "Southern California" is defined as Los Angeles County, Orange County, Riverside County, San Bernardino County, San Diego County and Ventura County.

## Education and Training

Education is considered an important factor for entry into the workforce. A four-year college degree in engineering is an important qualification in that industry. Barriers to such education may affect employment and ultimately advancement and business ownership. Greater barriers for minorities and women could, in part, explain relative differences in business ownership by race/ethnicity and gender.[3]

Formal education beyond high school is not a prerequisite for most construction industry jobs.[4] For this reason, the construction industry often attracts individuals who do not have a high level of educational attainment.

**Construction.** Many construction industry employees in Southern California have at most a high school education. Based on the 2000 Census of Population, 27 percent of workers in construction were just high school graduates and 37 percent had not finished high school. According to the U.S. Bureau of the Census 2007 American Community Survey (ACS) this trend in Southern California continued through 2007, with 33 percent of construction workers just high school graduates and 33 percent with no high school diploma. Of people working in construction in Southern California, 9 percent in 2000 and 10 percent in 2007 had at least a four-year college degree.

In the Southern California workforce, African Americans and Hispanic Americans represent a relatively large share of workers with just a high school education. In 2000, 70 percent of Hispanic Americans and 34 percent of African American workers 25 and older had no college education at all, compared to 23 percent of non-Hispanic whites. Although the percentage of workers with no college education declined for many race/ethnicity groups between 2000 and 2007, percentages for African Americans and Hispanic Americans were still substantially higher than those for non-Hispanic whites in 2007.

Based on education requirements of entry level jobs and the limited education beyond high school for many African Americans and Hispanic Americans in Southern California, one would expect a relatively high representation of these minority groups in the Southern California construction industry, especially in entry-level positions.

Training is largely on-the-job and through trade schools and apprenticeship programs. Entry level jobs for workers out of high school are often laborers, helpers or apprentices. More skilled positions in the construction industry may require additional training through a technical or trade school or through an apprenticeship or other employer-provided training program. Apprenticeship programs can be developed by employers, trade associations, trade unions and other groups. Workers can enter apprenticeship programs from high school or a trade school. Apprenticeships have traditionally been three- to five-year programs that combine on-the-job training with classroom instruction.[5] Opportunities for these programs across race/ethnicity are discussed later in this appendix.

---

[3] Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 42 (4): 562-584.

[4] Educational attainment of San Diego County workers is very similar to Southern California as a whole — 57 percent had no more than a high school education in 2000 and 55 percent had no more than a high school education in 2007.

[5] Bureau of Labor Statistics, U.S. Department of Labor. 2006-07. "Construction." C*areer Guide to Industries.* http://www.bls.gov/oco/cg/cgs003.htm (accessed February 15, 2007).

In contrast, among workers 25 and older in Southern California, 46 percent of Asian-Pacific Americans and 68 percent of Subcontinent Asian Americans had four-year college degrees in 2000. Given high educational levels of Asian-Pacific Americans and Subcontinent Asian Americans in California, representation of these groups in construction might be low relative to non-Hispanic whites.

In Southern California, women workers age 25 or over have more education, on average, then men. Based on 2000 data, 38 percent of female workers age 25 and over had no college education at all, compared to 42 percent of males in Southern California. In San Diego County, 30 percent of female and 33 percent of male workers age 25 or over had only a high school education in 2000. These differences increased slightly in both San Diego County and Southern California between 2000 and 2007.

**Engineering.** Based on Census data for 2000, 45 percent of individuals working in the engineering industry in San Diego County had at least a four-year college degree, the same percentage as in all of Southern California. When only examining people who work as civil, mining, geological and environmental engineers, the percentage is even greater — 82 percent had at least a four-year college degree in San Diego County.

The level of education needed to become an engineer is a barrier for African Americans, Hispanic Americans and Native Americans. Very few Hispanic Americans and relatively few African Americans and Native Americans working in Southern California had a degree from a four-year college in either 2000 or 2007.

Figure F-2 examines the percentage of workers 25 and older who had at least a four-year degree, across all industries in San Diego County, Southern California and the United States in 2000 and 2007. In San Diego County in 2007, only 15 percent of Hispanic American workers 25 and older had a college degree, much lower than the 46 percent of non-Hispanic white workers in this age group. About 23 percent of African American workers and 28 percent of Native American workers in San Diego County had college degrees in 2007. Disparities in educational attainment were similar for all of Southern California.

Most race/ethnicity groups showed an increase in the proportion of workers with degrees from 2000 to 2007, with the proportion growing fastest among minorities. However, the percentage of Hispanic Americans, African Americans and Native Americans who had college degrees was still considerably smaller than that of non-Hispanic whites in 2007. In contrast, relatively more Asian-Pacific Americans and Subcontinent Asian Americans had college degrees than non-Hispanic whites in 2007. Between 2000 and 2007, the percentage of female workers with college degrees surpassed that of males in San Diego County, Southern California and the United States.

**Figure F-2.**
**Percentage of all workers 25 and older with at least a four-year degree in San Diego County, Southern California and the United States, 2000 and 2007.**

Note:

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

| San Diego County | 2000 | | 2007 | |
|---|---|---|---|---|
| **Race/ethnicity** | | | | |
| African American | 18.4 % | ** | 23.3 % | ** |
| Asian-Pacific American | 39.6 | | 49.4 | ** |
| Subcontinent Asian American | 73.2 | ** | 88.3 | ** |
| Hispanic American | 12.8 | ** | 15.2 | ** |
| Native American | 21.0 | ** | 28.1 | ** |
| Other minority group | 35.1 | ** | 34.2 | |
| Non-Hispanic white | 40.2 | | 45.8 | |
| **Gender** | | | | |
| Female | 32.7 % | | 37.8 % | |
| Male | 32.9 | | 36.7 | |
| **Southern California** | **2000** | | **2007** | |
| **Race/ethnicity** | | | | |
| African American | 21.5 % | ** | 27.4 % | ** |
| Asian-Pacific American | 46.0 | ** | 51.6 | ** |
| Subcontinent Asian American | 67.6 | ** | 75.5 | ** |
| Hispanic American | 8.5 | ** | 11.4 | ** |
| Native American | 20.0 | ** | 23.2 | ** |
| Other minority group | 32.8 | ** | 36.0 | ** |
| Non-Hispanic white | 38.8 | | 44.1 | |
| **Gender** | | | | |
| Female | 28.3 % | | 32.7 % | ** |
| Male | 28.5 | | 30.7 | |
| **United States** | **2000** | | **2007** | |
| **Race/ethnicity** | | | | |
| African American | 17.4 % | ** | 20.8 % | ** |
| Asian-Pacific American | 43.6 | ** | 48.1 | ** |
| Subcontinent Asian American | 67.1 | ** | 72.3 | ** |
| Hispanic American | 12.1 | ** | 14.3 | ** |
| Native American | 15.8 | ** | 17.7 | ** |
| Other minority group | 29.3 | ** | 29.6 | ** |
| Non-Hispanic white | 31.5 | | 35.0 | |
| **Gender** | | | | |
| Female | 28.2 % | ** | 32.3 % | ** |
| Male | 28.7 | | 30.3 | |

**Additional indices of high school educational attainment.** Because of the importance of college admission as a step in entering the engineering industry, the study team examined additional information on the educational achievement of minority high school students in Southern California. The California Legislative Black Caucus published a report in early 2007 that included indices of high school achievement for African Americans, Asian Americans, Hispanic Americans and non-Hispanic whites in the San Diego and Los Angeles metropolitan areas. BBC translated the reported statistics into indices where 100 is the value for non-Hispanic white students. Figures lower than 100 indicate a lower rate for minority students.

For example, only 23.5 percent of African American students in San Diego County had completed necessary courses for admission to a University of California (UC) or California State University (CSU) school in 2004-2005. This was far below the rate for non-Hispanic white students (46.7%). BBC created an "index" for African American student achievement for completion of necessary courses by dividing 23.5 percent by 46.7 percent, and then multiplying by 100, yielding an index value of "50." Hispanic American students in the San Diego area had an achievement index of 47 when compared with non-Hispanic white students completing courses for UC/CSU entrance.

As shown in Figure F-3, high school achievement indices ranged from 50 to 96 for African American students in San Diego County. The range for Hispanic Americans in San Diego County was from 47 to 96.

**Figure F-3.**
**Indices of high school achievement for African Americans, Asian Americans, Hispanic Americans and non-Hispanic whites in San Diego and Los Angeles metropolitan areas, 2004-2005 (white=100)**

| San Diego Metropolitan Area | African American | Asian American | Hispanic American | Non-Hispanic white |
|---|---|---|---|---|
| Completed courses for UC/CSU entrance 2004-2005 | 50 | 267 | 47 | 100 |
| CAT/6 reading scores (11th Grade) | 96 | 104 | 96 | 100 |
| High school exit exam passing rate: English | 64 | 161 | 64 | 100 |
| High school exit exam passing rate: math | 72 | 148 | 63 | 100 |
| SAT average score | 82 | 94 | 85 | 100 |
| High school dropouts: 1 year rate | 443 | 53 | 286 | 100 |
| High school dropouts: 4 year rate | 436 | 52 | 288 | 100 |
| **Los Angeles Metropolitan Area** | **African American** | **Asian American** | **Hispanic American** | **Non-Hispanic white** |
| Completed courses for UC/CSU entrance 2004-2005 | 75 | 144 | 71 | 100 |
| CAT/6 reading scores (11th Grade) | 95 | 100 | 95 | 100 |
| High school exit exam passing rate: English | 64 | 100 | 63 | 100 |
| High school exit exam passing rate: math | 44 | 112 | 49 | 100 |
| SAT average score | 77 | 100 | 81 | 100 |
| High school dropouts: 1 year rate | 343 | 76 | 281 | 100 |
| High school dropouts: 4 year rate | 327 | 74 | 281 | 100 |

Note: Data for completed courses for UC/CSU entrance were for 2004-2005. Dates not provided in source for other educational statistics.
Source: BBC Research & Consulting from California Legislative Black Caucus. 2007. The State of Black California, Full Report, Sacramento.

Notable indices for African Americans included:

- Passing the high school exit exam for English at a rate roughly two-thirds that of non-Hispanic white students in San Diego County; and

- Having a high school dropout rate more than four times higher than that of non-Hispanic white students in San Diego County.

The achievement index with the least disparity between African Americans and non-Hispanic whites in both metropolitan areas was reading scores from the standardized achievement test administered to students in the 11th grade.

Hispanic American students in both the San Diego and Los Angeles metropolitan areas, on average, exhibited similar disparities in achievement as found for African American students. High school dropout rates were lower for Hispanic Americans than for African Americans, but still more than double that of non-Hispanic whites.

It appears that disparities in educational achievement in high school or in prior grades are important in explaining the relatively low number of African Americans and Hispanic Americans that have college degrees in Southern California. There are many studies throughout the nation that consider whether the causes of the disparities in educational outcomes for African American and Hispanic American high school students are affected by discrimination; these are not reviewed here.

Overall, the California Legislative Black Caucus report showed educational outcomes for Asian American students to be similar or better than non-Hispanic whites.

**Additional factors affecting college engineering programs in Southern California.** Historically, college engineering programs in the United States were slow to open doors to minorities such as African Americans.[6] In recent years, California has stood out as having low percentages of African American engineering students. Out of the top 26 engineering schools in the nation in 2002, two are UC campuses in Southern California — UC-Los Angeles (UCLA) and UC-San Diego (UCSD). A 2003 study identified these schools and other UC campuses for the lowest percentages of African American engineering students among the top 26:[7]

- In fall 2002, at UCLA fewer than 2 percent of engineering enrollments were African American.

- UCSD had no African Americans among its 5,264 engineering students in fall 2002.

Because the enrollment statistics for engineering students were for 2002, most of these students enrolled in college after Proposition 209 had gone into effect. Proposition 209 prohibits California's public colleges from giving preferential treatment to minorities and women in college admissions and financial aid except as part of a federal program. This amendment to the California constitution was passed by voters in 1996 and went into effect in 1998. Many scholars blame Proposition 209 for the

[6] Unknown Author. 2003. "Blacks Strive to Build a Bridgehead in Academic Engineering." *The Journal of Blacks in Higher Education*. 41 (Autumn): 98-108, 98.

[7] Ibid.

relatively low representation of African American and Hispanic American students at more selective colleges in California.[8,9]

Following the passing of Proposition 209, admission rates of minority applicants dropped dramatically and in the ten years following have not entirely recovered. One scholar found that percentages of African American students at UCLA prior to the amendment were nearly double the percentages in 2007.[10] A recent article notes that in the case of African Americans, their admission rates at more prestigious UC campuses (including Los Angeles and San Diego) have remained low, but rates at the least selective campuses have grown since Proposition 209.[11] Another scholar writes about the effect of Proposition 209 on transfer students and found that African Americans have much lower rates of acceptance while Hispanic Americans experience transfer admission rates similar to non-Hispanic whites.[12]

Asian American applicants were not negatively affected by the amendment. Asian American students accounted for only 11 percent of California high school graduates in 2006, but accounted for 36 percent of all students admitted to the University of California system.[13]

To better understand the broader patterns of enrollment by race and ethnicity in Southern California schools, the study team examined total undergraduate African American, Hispanic American and Native American enrollment at three state universities in Southern California in 1995, 2003 and 2007: UCSD, UCLA and San Diego State University (SDSU). Figure F-4 shows these trends.

- Between 1995 and 2003, enrollment of African American students decreased by more than one-third at UCLA and dropped slightly lower in fall 2007. Decreases were also seen at UCSD and SDSU between 1995 and 2003, but the number of African American enrollments rebounded to 1995 levels at UCSD and stabilized at SDSU between 2003 and 2007.

- Slight declines in enrollment of Hispanic Americans also occurred at UCLA from 1995 to 2003 and from 2003 to 2007. However, enrollment of Hispanic Americans increased at the other two campuses.

- Enrollment of Native Americans dropped at all three campuses from 1995 to 2003. Enrollment numbers increased at UCSD and SDSU from 2003 to 2007, but they remained below enrollment counts prior to the passing of Proposition 209.

---

[8] Contreras, Frances. 2003. "The Reconstruction of Merit Post-Proposition 209." *Educational Policy*. 19 (2): 371-395.

[9] Karabel, Jerome. 1999. "The Rise and Fall of Affirmative Action at the University of California." *The Journal of Blacks in Higher Education*. 25 (Autumn): 109-112.

[10] Unknown Author. 2007. "The Ban on Affirmative Action at the University of California is Now 10 Years Old: The Severe Harm to the Educational Opportunities for African Americans Persists" *The Journal of Blacks in Higher Education*. 56 (Summer): 34-35, 34.

[11] Unknown Author. 2006. "Affirmative Action Ban Continues to Inflict Severe Damage on Black Higher Educational Opportunities in California." *The Journal of Blacks in Higher Education*. 51(Spring): 44.

[12] Unknown Author. 2006. "The Devastating Impact of Proposition 209 on Black Higher Education in California." *The Journal of Blacks in Higher Education*. 59(Spring): 14-15, 14.

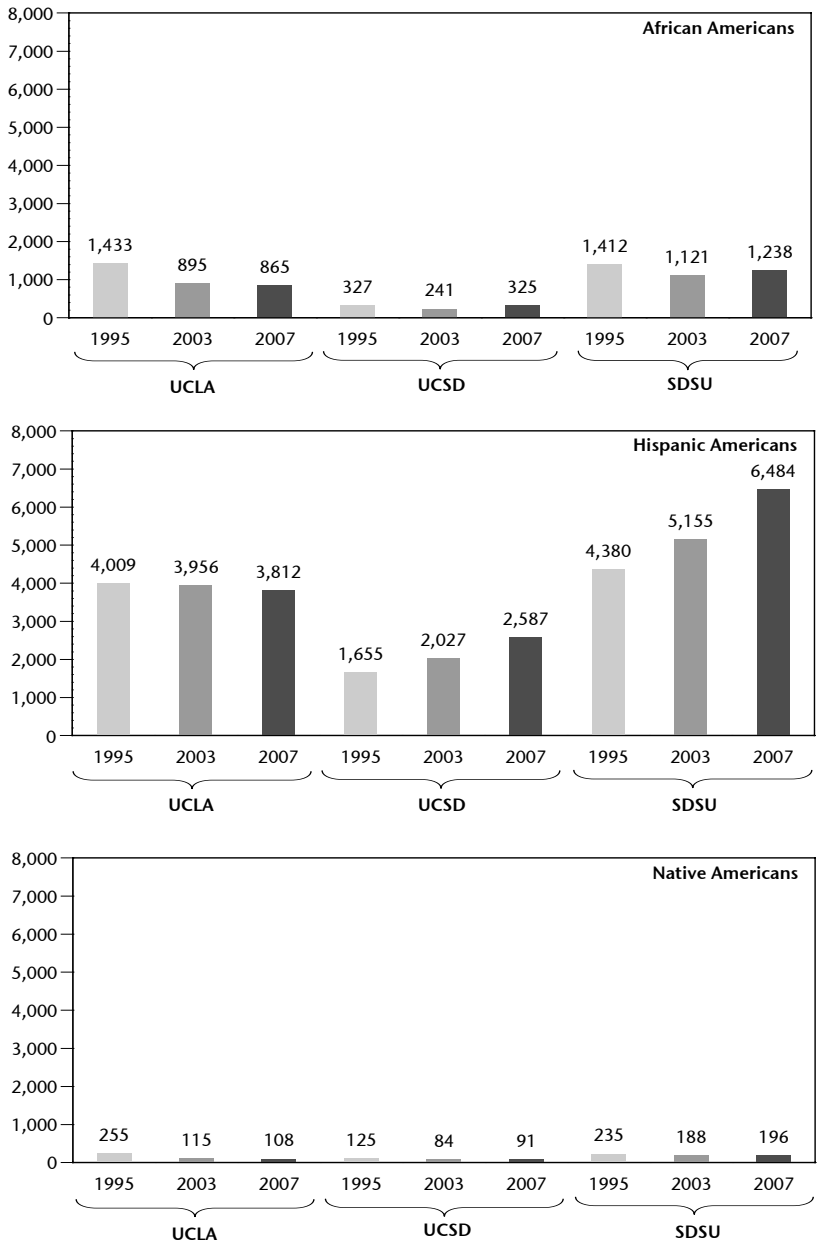
[13] Unknown Author. 2006. "Affirmative Action Ban Continues to Inflict Severe Damage on Black Higher Educational Opportunities in California. *The Journal of Blacks in Higher Education*. 51(Spring).

The declining enrollment of African American and Hispanic American students between 1995 and 2003 can be attributed to fewer offers of admission from these schools; applications from African American and Hispanic American students actually increased over this period.[14]

**Figure F-4. Enrollment of undergraduates at selected University of California campuses and San Diego State University, fall 1995, 2003 and 2007**

Source:

UC Office of the President, Student Affairs, Admissions, available at http://www.ucop.edu/sas/index.html and SDSU Office of Analytic Studies available at http://asir.sdsu.edu/app/.




[14] Note that total enrollment at UCLA, UC-San Diego and San Diego State University increased by 19 percent, 32 percent and 29 percent respectively between 1995 and 2007.

## Employment

With educational opportunities and attainment for minorities and women as context, the study team examined employment in construction and engineering in Southern California.

**Construction.** Based on ACS data, 63 percent of people working in the Southern California construction industry in 2007 were minority; in San Diego County, minorities made up 46 percent of construction industry workers. This represents increases from 2000 for both San Diego and Southern California. Almost all the increase in minority construction workers between 2000 and 2007 corresponds to growth in the number of Hispanic Americans working in the industry. Of the people working in construction in Southern California in 2007:

- 55 percent were Hispanic Americans;
- 3 percent were African Americans;
- 4 percent were Asian-Pacific Americans;
- 0.7 percent were Native Americans; and
- 0.2 percent were Subcontinent Asian Americans.

In Southern California, Hispanic Americans make up a greater share of workers in construction than in the economy as a whole, representing over one-half of construction workers, but only about 39 percent of all workers in 2007. In contrast, African Americans, Asian-Pacific Americans and Subcontinent Asian Americans working in Southern California are less likely to work in construction than other industries.

Similarly, Hispanic Americans represent over one-third of the construction industry in San Diego County but only about a quarter of workers in all industries. African Americans, Asian-Pacific Americans and Subcontinent Asian Americans are underrepresented in the San Diego construction industry.

- African Americans were 3 percent of the construction workforce and nearly 7 percent of all workers in Southern California in 2007. A similar disparity is seen in San Diego County where African Americans are 5 percent of all workers but only 2 percent of construction workers.
- The percentage of California construction workers who are African American declined from 2000 to 2007 in both San Diego and Southern California. Average educational attainment of African Americans is consistent with requirements for construction jobs, so education does not explain the relatively low number of African American workers in this industry. A number of studies throughout the United States have argued that race discrimination by construction unions have held down employment of African Americans in construction trades.[15]

[15] Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

- Asian-Pacific Americans were 3 percent of the construction workforce and 11 percent of all workers in San Diego in 2007 (similar to all of Southern California). The fact that Asian-Pacific Americans are more likely to go to college than other groups may explain part of this difference.

- Relative under-representation of Subcontinent Asian Americans is evident in 2000 and 2007 in both San Diego and all of Southern California.[16]

Overall, these differences in employment patterns are similar to those seen in the construction industry for the nation.

There are also large disparities between the percentage of all workers who are women and the percentage of women in the construction industry in San Diego County, Southern California and the nation. The share of construction workers in the United States who are women has remained relatively unchanged between 2000 and 2007. In San Diego County, the share of construction workers who are women increased from 1980 to 2007 but still remained far below the percent of workers in all industries who are women.

Figure F-5 used data from 1980, 2000 and 2007 to compare the demographic composition of the construction industry with the total workforce in San Diego County, Southern California and the United States.

[16] Note that Census definitions of race and ethnicity have changed over time, which affects comparability of statistics from one census year to the next. Appendix I discusses how BBC coded data concerning race and ethnicity for each Census and for the 2007 ACS.

**Figure F-5.**
**Demographics of workers in construction and all industries in San Diego County, Southern California and the U.S., 1980, 2000 and 2007**

| | Construction | | | All industries | | |
|---|---|---|---|---|---|---|
| **San Diego County** | **1980 (n=3,193)** | **2000 (n=4,755)** | **2007 (n=1,112)** | **1980 (n= 47,507)** | **2000 (n=76,744)** | **2007 (n=16,273)** |
| **Race/ethnicity** | | | | | | |
| African American | 2.5 % ** | 3.4 % ** | 1.8 % ** | 4.7 % | 6.0 % | 5.3 % |
| Asian-Pacific American | 0.9 ** | 3.6 ** | 3.4 ** | 4.1 | 10.1 | 11.2 |
| Subcontinent Asian American | 0.1 | 0.1 ** | 0.1 ** | 0.1 | 0.5 | 0.7 |
| Hispanic American | 14.7 ** | 32.4 ** | 39.6 ** | 13.3 | 23.5 | 27.4 |
| Native American | 1.3 ** | 1.3 | 1.1 | 0.7 | 1.1 | 1.1 |
| Other minority group | 0.2 | 0.7 | 0.3 | 0.1 | 0.7 | 0.3 |
| **Total minority** | 19.6 % | 41.5 % | 46.3 % | 23.0 % | 42.0 % | 46.0 % |
| Non-Hispanic white | 80.4 ** | 58.5 ** | 53.7 | 77.0 | 58.0 | 54.0 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | | | |
| Female | 9.6 % ** | 10.3 % ** | 13.1 % ** | 47.1 % | 45.9 % | 46.4 % |
| Male | 90.4 ** | 89.7 ** | 86.9 ** | 52.9 | 54.1 | 53.6 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Southern California** | **1980 (n=19,777)** | **2000 (n=30,911)** | **2007 (n=7,539)** | **1980 (n= 356,525)** | **2000 (n=509,752)** | **2007 (n=106,106)** |
| **Race/ethnicity** | | | | | | |
| African American | 4.3 % ** | 4.0 % ** | 3.1 % ** | 7.8 % | 7.1 % | 6.8 % |
| Asian-Pacific American | 1.9 ** | 3.7 ** | 4.1 ** | 4.7 | 10.9 | 11.7 |
| Subcontinent Asian American | 0.1 ** | 0.2 ** | 0.2 ** | 0.2 | 0.8 | 1.0 |
| Hispanic American | 19.8 | 45.5 ** | 55.4 ** | 20.3 | 35.5 | 39.4 |
| Native American | 1.0 ** | 1.1 ** | 0.7 | 0.7 | 0.9 | 0.7 |
| Other minority group | 0.2 | 0.9 | 0.2 ** | 0.2 | 0.9 | 0.4 |
| **Total minority** | 27.6 % | 54.7 % | 63.3 % | 33.8 % | 55.6 % | 59.7 % |
| Non-Hispanic white | 72.7 ** | 44.7 ** | 36.3 ** | 66.1 | 44.0 | 40.0 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | | | |
| Female | 10.5 % ** | 9.5 % ** | 9.6 % ** | 46.0 % | 46.3 % | 46.2 % |
| Male | 89.5 ** | 90.5 ** | 90.4 ** | 54.0 | 53.7 | 53.8 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **United States** | **1980 (n=374,532)** | **2000 (n=557,707)** | **2007 (n=124,711)** | **1980 (n=6,043,248)** | **2000 (n=7,865,814)** | **2007 (n=1,675,930)** |
| **Race/ethnicity** | | | | | | |
| African American | 7.8 % ** | 7.6 % ** | 6.7 % ** | 10.0 % | 11.5 % | 11.8 % |
| Asian-Pacific American | 0.7 ** | 1.3 ** | 1.5 ** | 1.4 | 3.5 | 4.0 |
| Subcontinent Asian American | 0.1 ** | 0.2 ** | 0.2 ** | 0.2 | 0.7 | 1.0 |
| Hispanic American | 5.9 ** | 16.2 ** | 23.2 ** | 5.7 | 11.6 | 13.9 |
| Native American | 0.8 ** | 1.6 ** | 1.3 ** | 0.6 | 1.2 | 1.1 |
| Other minority group | 0.1 | 0.4 | 0.3 ** | 0.1 | 0.4 | 0.2 |
| **Total minority** | 15.4 % | 27.3 % | 33.2 % | 18.0 % | 28.9 % | 32.0 % |
| Non-Hispanic white | 84.7 ** | 72.7 ** | 66.8 ** | 81.9 | 71.0 | 67.9 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | | | |
| Female | 9.0 % ** | 10.1 % ** | 9.7 % ** | 46.3 % | 48.1 % | 48.0 % |
| Male | 91.0 ** | 89.9 ** | 90.3 ** | 53.7 | 51.9 | 52.0 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |

Note: ** Denotes that the difference in proportions between the construction and all industry groups for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

**Importance of unions in entering the construction industry.** Labor scholars characterize construction as a historically volatile industry sensitive to business cycles, making the presence of labor unions important for stability and job security within the industry.[17] The temporary nature of construction work results in uncertain job prospects, and the high turnover of laborers presents a disincentive for construction firms to invest in training. Some scholars have claimed that constant turnover has lent itself to informal recruitment practices and nepotism, compelling laborers to tap social networks for training and work. They credit the importance of social networks with the high degree of ethnic segmentation in the construction industry.[18] Unable to integrate themselves into traditionally white social networks, African Americans faced long-standing historical barriers to entering the industry.[19]

Construction unions aim to provide a reliable source of labor for employers and preserve job opportunities for workers by formalizing the recruitment process, coordinating training and apprenticeships, enforcing standards of work and mitigating wage competition. The unionized sector of construction would seemingly be the best road for African American and other underrepresented groups into the industry. However, researchers have identified discrimination by trade unions that have historically prevented minorities from obtaining employment in skilled trades.[20] Past papers claim union discrimination took place in a variety of forms including:

- Unions have used admissions criteria that adversely affect minorities. Federal courts ruled in the 1970s that standardized testing requirements unfairly disadvantaged minority applicants who had less exposure to testing and that requirements that new union members have relatives in the union perpetuate the effects of past discrimination.[21] More recent disparity studies in California reveal that these practices persist: admissions testing requirements for union membership were still being used that adversely affected minorities.[22] Moreover, applicants who were relatives of union members were often waived from admissions requirements.[23]

- Of those minority individuals who are admitted to unions, a disproportionately low number are admitted into apprenticeship programs coordinated by unions. Apprenticeship programs are important means of producing skilled construction laborers, and the reported exclusion of African Americans from these programs has severely limited their access to skilled occupations in the construction industry.[24]

---

[17] Applebaum, Herbert. 1999. *Construction Workers, U.S.A*. Westport: Greenwood Press.

[18] Waldinger, Roger and Thomas Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction." *Politics & Society*, 19(3).

[19] Feagin, Joe R. and Nikitah Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41( 4): 562-584.

[20] U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042.

[21] Ibid. See United States v. Iron Workers Local 86 (1971), Sims v. Sheet Metal Workers International Association (1973), and United States v. International Association of Bridge, Structural and Ornamental Iron Workers (1971).

[22] National Economic Research Association, Inc. 1992. The Utilization of Minority and Woman-Owned Business Enterprises by Contra Costa County. 185-186.

[23] BPA Economics, Mason Tillman Associates, and Boasberg and Norton. 1990. *MBE-WBE Disparity Study of the City of San Jose*.

[24] Applebaum. 1999. Construction Workers, U.S.A.

- While formal training and apprenticeship programs exist within unions, most training of union members takes place informally through social networking. Nepotism characterizes the unionized sector of construction as it does the non-unionized sector, and this favors a white-dominated status quo.[25]

- Traditionally white unions have been successful in resisting policies designed to increase African American participation in training programs. The political strength of unions in resisting affirmative action in construction has hindered the advancement of African Americans in the industry.[26]

- Discriminatory practices in employee referral procedures, including apportioning work based on seniority, have precluded minority union members from having the same access to construction work as their white counterparts.[27]

- According to testimony from African American union members, even when unions implement meritocratic mechanisms of apportioning employment to laborers, white workers are often allowed to circumvent procedures and receive preference for construction jobs.[28]

However, these historical observations may not be indicative of current dynamics in construction unions. For example, the 2007 Current Population Survey (CPS) provides data indicating union membership for African Americans and non-Hispanic whites to be similar.[29] The CPS asked participants "Are you a member of a labor union or of an employee association similar to a union?" CPS data show union membership for African Americans in construction to be 11 percent and non-Hispanic whites to be 12 percent (not a statistically significant difference). On the other hand, only 7 percent of Hispanic Americans are union members based on these national data.

A recent study on the presence of African Americans and Hispanic Americans in apprenticeship programs may help explain the high rates of Hispanics in the construction industry despite low union memberships. Two types of apprenticeship programs are available, joint programs (run by a combination of a union and one or more employers) and non-joint programs (run solely by one or more employers). Using 1989-1995 data from the U.S. Department of Labor, the study found that the probability of an African American being an apprentice in a joint program was 8 percent higher than being in a non-joint program.

[25] Ibid. 299. A high percentage of skilled workers reported having a father or relative in the same trade. However, the author suggests this may not be indicative of current trends.

[26] Waldinger and Bailey. 1991. "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction."

[27] U.S. Department of Justice. 1996. Proposed Reforms to Affirmative Action in Federal Procurement. 61 FR 26042. See *United Steelworkers of America v. Weber* (1979) and *Taylor v. United States Department of Labor* (1982).

[28] Feagin and Imani. 1994. "Racial Barriers to African American Entrepreneurship: An Exploratory Study." *Social Problems*. 41( 4): 562-584.

[29] 2006 Current Population Survey (CPS), U.S. Census Bureau and Bureau of Labor Statistics.

On the other hand, Hispanic Americans' odds of being in non-joint program are 7 percent higher than a joint program.[30] These data suggest that Hispanic Americans may be more likely than African Americans to enter the construction industry without the support of a union. Thus, one reason that Hispanic Americans represent a large portion of the construction workers may be that their participation is less hindered by possible union discrimination.

Another recent study, which used U.S. Department of Labor data in combination with data from the California Apprenticeship Agency from 1995-2003, found that apprenticeship program attrition rates and the occupation students were training for were very different for non-Hispanic whites, African Americans and Hispanic Americans. Non-Hispanics had the lowest attrition rate at 47 percent, African Americans the highest at 70 percent and Hispanic Americans in the middle with an attrition rate of 63 percent. In addition, both African Americans and Hispanic Americans were more likely to enroll in training programs for occupations with lower pay rates and prestige levels.[31] This study did not explore causation of the observed variations. However, they could be explained by a variety of factors:

- Students in apprenticeship programs may drop out due to dissatisfaction with the program, training or occupation.[32]

- The expected benefits of staying in the apprenticeship program are less for lower paying occupations.[33] Thus, there may be less incentive for apprentices in occupations with lower pay levels to complete long arduous programs. Most programs are between 6,000 and 8,000 hours and last several years.[34]

- Unobserved characteristics of the apprentices, such as financial status, previous education, English proficiency, age and a variety of other socioeconomic factors, may limit the ability of an individual to complete the program.

Although the minority and non-minority numbers vary in union membership and union program participation, the causes of these differences and their effects on construction industry employment are unresolved. Research is especially limited on the impact of unions on Asian-Pacific American employment. It is unclear from past studies whether unions presently help or hinder equal opportunity in construction and whether effects in Southern California are different from other parts of the country. In addition, the current research indicates that the effects of unions on entry into the construction industry may be different for different minority groups.

---

[30] Bilginsoy, Cihan. 2005. "How Unions Affect Minority Representation in Building Trades Apprenticeship Programs." *Journal of Labor Research, 57(1).*

[31] Bilginsoy, Cihan. 2003. "The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs." *Industrial & Labor Relations Review,* 57(1) 54-67.

[32] Bilginsoy. 2003. "The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs." *Industrial & Labor Relations Review,* 57(1) 54-67.

[33] Bilginsoy, Cihan. 2007. "Delivering Skills: Apprenticeship Program Sponsorship and Transition from Training." Industrial Relations, 46(4): 738-765.

[34] Bilginsoy. 2003. "The Hazards of Training: Attrition and Retention in the Construction Industry Apprenticeship Programs." *Industrial & Labor Relations Review,* 57(1) 54-67.

**Engineering industry.** The study team also examined the race/ethnicity and gender composition of the engineering industry in Southern California and the U.S. based on data from 1980, 2000 and 2007. The results are presented in Figure F-6.[35]

In 2007, more than two-thirds of people working as civil engineers in the Southern California engineering industry were non-Hispanic whites — a greater percentage than non-Hispanic whites' representation across all industries in the state. Compared to all workers in Southern California, Asian-Pacific Americans and Subcontinent Asian Americans also had greater representation in the engineering industry than in all industries. These patterns in Southern California are found in 1980 and 2000 as well, and reflect the trends seen in the nation.

As shown in Figure F-6, African Americans and Hispanic Americans continue to have relatively low representation among civil engineers in Southern California:

- African Americans made up a small share of civil engineers relative to African Americans' share of employment in other industries (3.1% compared with 6.7% in 2007). This was also true in 1980 and 2000.

- Hispanic Americans made up about 10 percent of civil engineers in 2007, roughly one-quarter of the Hispanic American representation in the overall Southern California workforce.

In 2000, Native Americans had very little representation among civil engineers in Southern California. In both 1980 and 2007 Census data, no respondents from Southern California reported being a Native American working as a civil engineer.

In 2007, women represented about 15 percent of civil engineers in Southern California (up from 10% in 2000). In contrast, women represented 46 percent of the whole Southern California workforce in both 2000 and 2007.[36]

Employment patterns seen among civil engineers in Southern California are generally consistent with those for nation.

[35] Detailed analysis of the distribution of civil engineers across race/ethnicity in San Diego County was not conducted due to small sample sizes.

[36] In general, Asian-Pacific Americans, Subcontinent Asian Americans and non-Hispanic whites in San Diego County represent higher percentages of civil engineers than all workers, while Hispanic Americans and women are underrepresented among civil engineers, similar to Southern California as a whole.

**Figure F-6.**
**Demographics of civil engineers and workers in all industries in Southern California and the U.S., 1980, 2000 and 2007**

| | Southern California | | | | | |
|---|---|---|---|---|---|---|
| | Engineering | | | All industries | | |
| | 1980 (n=224) | 2000 (n=462) | 2007 (n=141) | 1980 (n= 356,525) | 2000 (n=509,752) | 2007 (n=106,106) |
| **Race/ethnicity** | | | | | | |
| African American | 3.1 % ** | 2.6 % ** | 3.3 % ** | 7.8 % | 7.1 % | 6.8 % |
| Asian-Pacific American | 11.2 ** | 22.1 ** | 15.6 | 4.7 | 10.9 | 11.7 |
| Subcontinent Asian American | 2.2 ** | 1.9 | 2.1 | 0.2 | 0.8 | 1.0 |
| Hispanic American | 5.4 ** | 8.3 ** | 10.1 ** | 20.3 | 35.5 | 39.4 |
| Native American | 0.0 | 0.7 | 0.0 ** | 0.7 | 0.9 | 0.7 |
| Other minority group | 0.0 | 1.6 | 0.0 ** | 0.2 | 0.9 | 0.4 |
| **Total minority** | 21.9 % | 37.3 % | 31.1 % | 33.8 % | 56.0 % | 60.0 % |
| Non-Hispanic white | 78.1 ** | 62.7 ** | 68.9 ** | 66.1 | 44.0 | 40.0 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | | | |
| Female | 4.5 % ** | 10.3 % ** | 15.1 % ** | 46.0 % | 46.3 % | 46.2 % |
| Male | 95.5 ** | 89.7 ** | 84.9 ** | 54.0 | 53.7 | 53.8 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| | **United States** | | | | | |
| | Engineering | | | All industries | | |
| | 1980 (n=2,347) | 2000 (n=6,568) | 2007 (n=2,147) | 1980 (n=6,043,224) | 2000 (n=7,865,814) | 2007 (n=1,675,930) |
| **Race/ethnicity** | | | | | | |
| African American | 1.9 % ** | 3.1 % ** | 3.0 % ** | 10.0 % | 11.5 % | 11.8 % |
| Asian-Pacific American | 4.6 ** | 6.5 ** | 7.4 ** | 1.4 | 3.5 | 4.0 |
| Subcontinent Asian American | 3.2 ** | 2.5 ** | 3.6 ** | 0.2 | 0.7 | 1.0 |
| Hispanic American | 3.0 ** | 4.1 ** | 4.4 ** | 5.7 | 11.6 | 13.9 |
| Native American | 0.1 ** | 0.7 ** | 0.4 ** | 0.6 | 1.2 | 1.1 |
| Other minority group | 0.3 | 0.5 | 0.3 | 0.1 | 0.4 | 0.2 |
| **Total minority** | 13.1 % | 17.4 % | 19.2 % | 18.2 % | 29.0 % | 32.1 % |
| Non-Hispanic white | 87.0 ** | 82.6 ** | 80.8 ** | 81.9 | 71.0 | 67.9 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | | | |
| Female | 3.5 % ** | 11.0 % ** | 13.8 % ** | 46.3 % | 48.1 % | 48.0 % |
| Male | 96.5 ** | 89.0 ** | 86.2 ** | 53.7 | 51.9 | 52.0 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % | 100.0 % |

Note: ** Denotes that the difference in proportions between civil engineers and workers in all industry groups for the given Census/ACS year is statistically significant at the 95% confidence level.

Source: BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

The study team examined the relative number of minorities and women among other engineering occupations in 2000 and 2007 that were not recorded in the 1980 Census. Figure F-7 on the next page gives the demographics of individuals employed as civil engineers, environmental engineers or mining and geological engineers. Figure F-7 also includes the demographics of all workers 25 and older with a college degree.

In most cases, relatively fewer minorities work as engineers compared to the population of all workers with college degrees. For example, in Southern California Hispanic Americans represented about 14 percent of workers with college degrees but only 7 percent of engineers in 2007 and African Americans were nearly 6 percent of workers with a college degree but less than 3 percent of engineers — both statistically significant differences.

Although female representation among engineers in Southern California increased slightly between 2000 and 2007, women still made up a very small share of engineers compared to all workers with college degrees.

Similar trends for African Americans, Hispanic Americans and women are seen in San Diego County (not included in Figure F-7 due to small sample sizes).

**Figure F-7.**
**Demographics of engineers and workers 25 and older with a college degree in Southern California and the U.S., 2000 and 2007**

| Southern California | 2000 | | 2007 | |
|---|---|---|---|---|
| | Engineers (n=401) | Workers 25 + with a college degree (n=118,446) | Engineers (n=123) | Workers 25 + with a college degree (n=31,283) |
| **Race/ethnicity** | | | | |
| African American | 2.3 % ** | 5.4 % | 2.5 % ** | 5.6 % |
| Asian-Pacific American | 23.9 ** | 18.2 | 16.4 | 20.0 |
| Subcontinent Asian American | 2.2 | 1.8 | 2.5 | 2.5 |
| Hispanic American | 7.0 ** | 9.9 | 6.8 ** | 13.7 |
| Native American | 0.5 | 0.6 | 0.0 | 0.5 |
| Other minority group | 1.5 | 1.0 | 0.5 | 0.4 |
| **Total minority** | 37.4 % | 36.5 % | 28.7 % | 42.7 % |
| Non-Hispanic white | 62.6 | 63.2 | 71.3 ** | 57.3 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | |
| Female | 9.9 % ** | 46.1 % | 14.6 % ** | 47.5 % |
| Male | 90.1 ** | 53.9 | 85.4 ** | 52.5 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % |

| United States | 2000 | | 2007 | |
|---|---|---|---|---|
| | Engineers (n=5,588) | Workers 25 + with a college degree (n=1,752,632) | Engineers (n=1,902) | Workers 25 + with a college degree (n=465,556) |
| **Race/ethnicity** | | | | |
| African American | 2.6 % ** | 6.9 % | 3.1 % ** | 7.6 % |
| Asian-Pacific American | 6.8 ** | 5.5 | 7.8 ** | 6.3 |
| Subcontinent Asian American | 2.9 ** | 1.8 | 4.1 ** | 2.5 |
| Hispanic American | 3.7 ** | 4.6 | 4.0 ** | 6.2 |
| Native American | 0.7 | 0.6 | 0.4 | 0.6 |
| Other minority group | 0.5 | 0.4 | 0.2 | 0.2 |
| **Total minority** | 17.1 % | 19.8 % | 19.6 % | 23.4 % |
| Non-Hispanic white | 82.9 ** | 80.2 | 80.4 ** | 76.6 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % |
| **Gender** | | | | |
| Female | 11.4 % ** | 47.8 % | 14.7 % ** | 49.6 % |
| Male | 88.6 ** | 52.2 | 85.3 ** | 50.4 |
| **Total** | 100.0 % | 100.0 % | 100.0 % | 100.0 % |

Note: ** Denotes that the difference in proportions between engineers and workers 25+ with a college degree for the given Census/ACS year is statistically significant at the 95% confidence level.

Engineers are those individuals whose reported occupation was civil engineer, environmental engineer or mining and geological engineer.

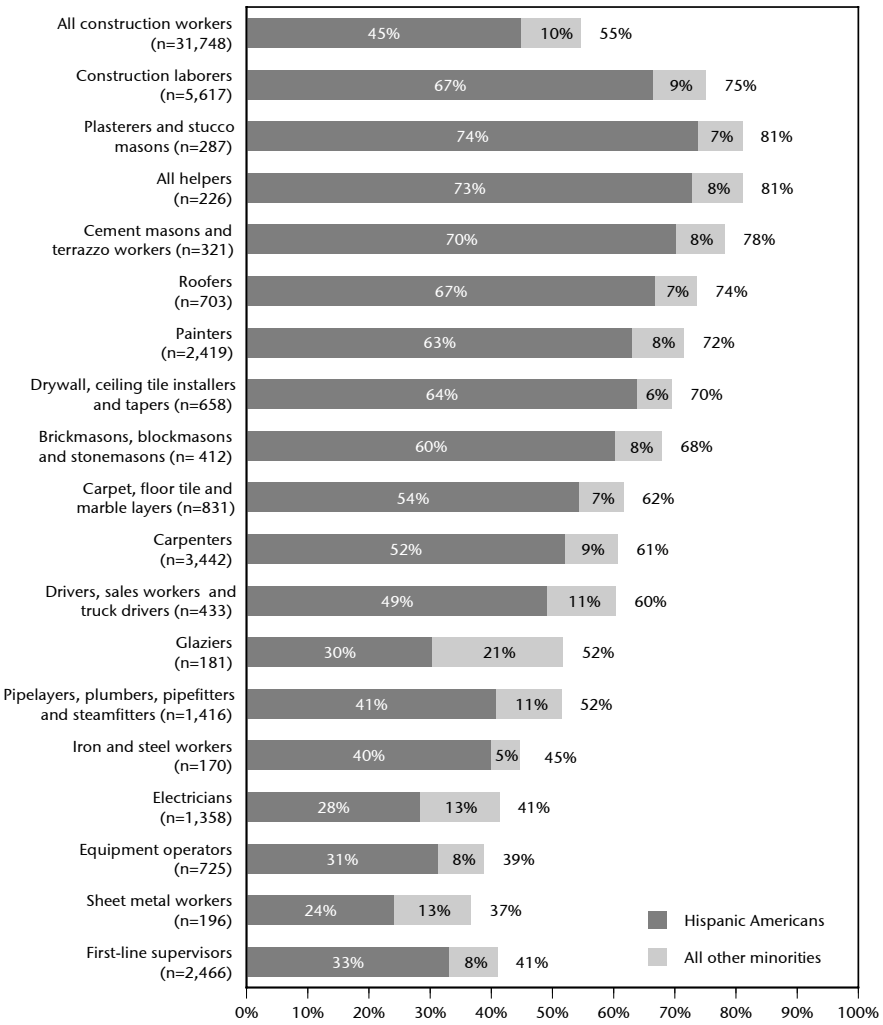
Source: BBC Research & Consulting from the 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

## Advancement in Construction

To research opportunities for advancement in the Southern California construction industry, the study team examined representation of minorities and women in construction occupations defined by the U.S. Bureau of Labor Statistics.[37] Full descriptions of construction trades with a large enough sample size for analysis in the 2000 Census and 2007 ACS can be found in Appendix J.

**Race and ethnic composition of construction occupations.** Figure F-8 and F-9 summarize the race/ethnicity of workers in the construction-related occupations defined above, including low-skill occupations such as laborers, higher-skill construction trades and supervisory roles in Southern California in 2000 and 2007, respectively.

**Figure F-8.**
**Minorities as a percentage of selected construction occupations in Southern California, 2000**

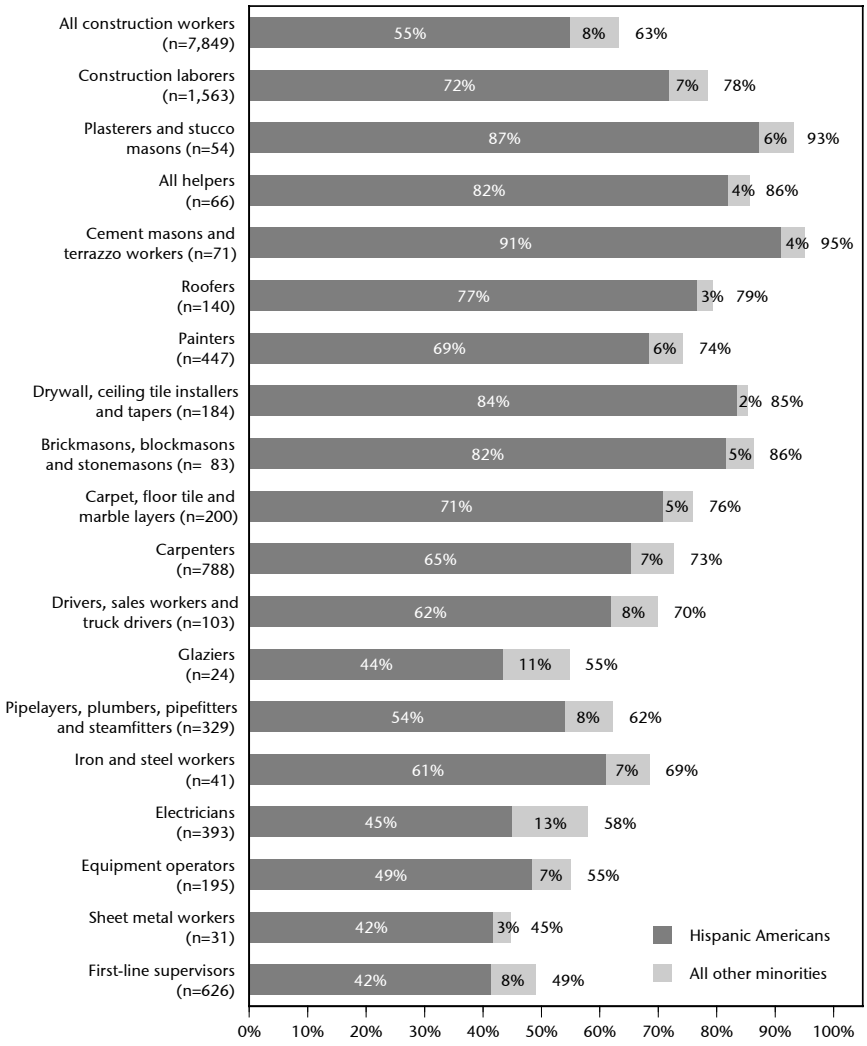



Note: Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

[37] Bureau of Labor Statistics, U.S. Department of Labor. 2001. "Standard Occupational Classification Major Groups." http://www.bls.gov/soc/soc_majo.htm (accessed February 15, 2007).

**Figure F-9.**
**Minorities as a percentage of selected construction occupations in Southern California, 2007**




Note: Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source: BBC Research & Consulting from 2007 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

Based on 2000 Census and 2007 ACS data, there are large differences in the racial and ethnic makeup of workers in various trades related to construction in Southern California. Overall, 55 percent of the construction workforce was minorities in 2000 and 63 percent was minorities in 2007. In Southern California, over one-half of the construction workforce was Hispanic American in 2007. Minorities comprised a relatively large share of the Southern California construction workforce for:

- Construction laborers (75% in 2000 and 78% in 2007);
- Plasterers and stucco masons (81% in 2000 and 93% in 2007);
- Helpers (81% in 2000 and 86% in 2007);
- Cement masons, concrete finishers and terrazzo workers (78% in 2000 and 95% in 2007);
- Drywall, ceiling tile installers, and tapers (70% in 2000 and 85% in 2007);
- Brick, block and stone masons (68% in 2000 and 86% in 2007); and
- Roofers (74% in 2000 and 79% in 2007).

Some occupations had a relatively low representation of minorities:

- Equipment operators (39% in 2000 and 55% in 2007); and
- Sheet metal workers (37% in 2000 and 45% in 2007).

For some occupations, the relative number of minority workers increased substantially between 2000 and 2007:

- Minority representation among carpenters increased from 61 percent in 2000 to 73 percent in 2007; and
- Minority representation among iron and steel workers grew from 45 percent in 2000 to 69 percent in 2007.
- Minority representation among electricians increased from 41 percent in 2000 to 58 percent in 2007.

About 41 percent of first-line supervisors of construction workers were minorities in 2000, less than minorities' share of all occupations in construction. Minorities made up a greater share of first-line supervisors (49%) in 2007, although this percent was still less than the overall representation of minorities among construction workers.

Most of the overall differences for minorities are driven by differences in the representation of Hispanic Americans in these occupations. However, there were some notable exceptions.

In 2000, African Americans represented a relatively large share of construction laborers (4.7%) and a relatively small share of first-line supervisors (2.8%). These are statistically significant differences from the overall representation of African Americans in the construction industry as a whole (4.0%). Similarly in 2007, representation of African Americans among first-line supervisors (2.4%) was lower than among all construction workers (3.1%).

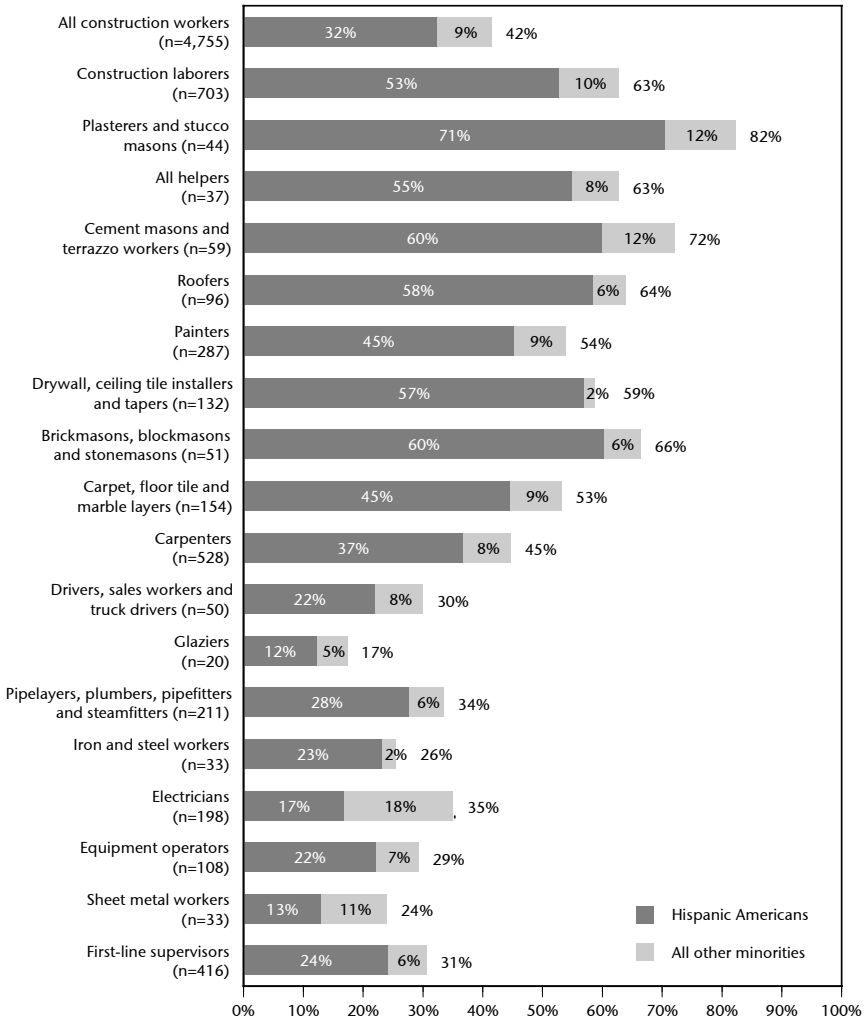
In 2000, Asian-Pacific Americans were a relatively small share of construction laborers (2.4%), cement masons, concrete finishers and terrazzo workers (1.7%), truck drivers (2.0%), iron and steel workers (0.6%) and first-line supervisors (2.9%) compared with the share of all construction workers who were Asian-Pacific Americans (3.6%). In 2007, Asian-Pacific Americans continued to represent a relatively small share of workers in several construction occupations, representing about 2.8 percent of construction laborers and 2.9 percent of construction supervisors, while still accounting for 3.9 percent of all construction workers.

The study team also analyzed the percentages of minority workers in construction–related occupations for San Diego County in 2000. The results are presented in Figure F-10. Small sample sizes in the ACS data restricted analysis, thus 2007 results for San Diego County are not presented.

In San Diego County, the large differences in the racial and ethnic makeup of workers in various trades related to construction are similar to those seen in Southern California. However in San Diego County, minorities are a smaller percentage of all construction workers (about 42%) than in Southern California. Some other notable differences include:

- First-line supervisors (minorities were only 31% in San Diego versus 41% in Southern California);
- Glaziers (17% in San Diego versus 52% in Southern California);
- Truck drivers and sales workers (30% in San Diego versus 60% in Southern California); and
- Construction laborers (63% in San Diego versus 75% in Southern California).

**Figure F-10.**
**Minorities as a percentage of selected construction occupations in San Diego County, 2000**




Note: Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source: BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

**Women in construction trades.** The study team also analyzed the proportion of women in construction related occupations. Overall, slightly fewer than 10 percent of workers in the Southern California construction industry were women in 2000 and 2007. Representation of women in the Southern California construction workforce has declined from 1980 to 2007.

Figures F-11 and F-12 show the representation of women in the Southern California construction industry in the occupations defined in Appendix J in 2000 and 2007, respectively. Women represented fewer than 2 percent of workers in the following occupations in both 2000 and 2007:

- Roofers;
- Drywall, ceiling tile installers and tapers;
- Brick, block and stone masons;
- Carpenters; and
- Iron and steel workers.

In the 2000 Census, no female respondents in Southern California reported being employed as a glazier in the construction industry. In the 2007 ACS, no female respondents reported their occupation as plasterer or stucco mason, cement mason, terrazzo worker or glazier.

Among all the individual occupations listed in Figures F-11 and F-12, first-line supervisors, brick, block and stone masons, electricians, machine operators and sheet metal workers show an increase in the representation of women between 2000 and 2007. On the other hand, the following occupations show a decrease in the representation of women in the same time period:

- Construction laborers;
- Roofers;
- Painters;
- Carpet, floor tile and marble layers;
- Carpenters;
- Truck drivers and sales workers;
- Pipelayers, plumbers, pipefitters, and steamfitters; and
- Iron and steel workers.

**Figure F-11.**
**Women as a percentage of construction workers in selected occupations in Southern California, 2000**

Note:

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

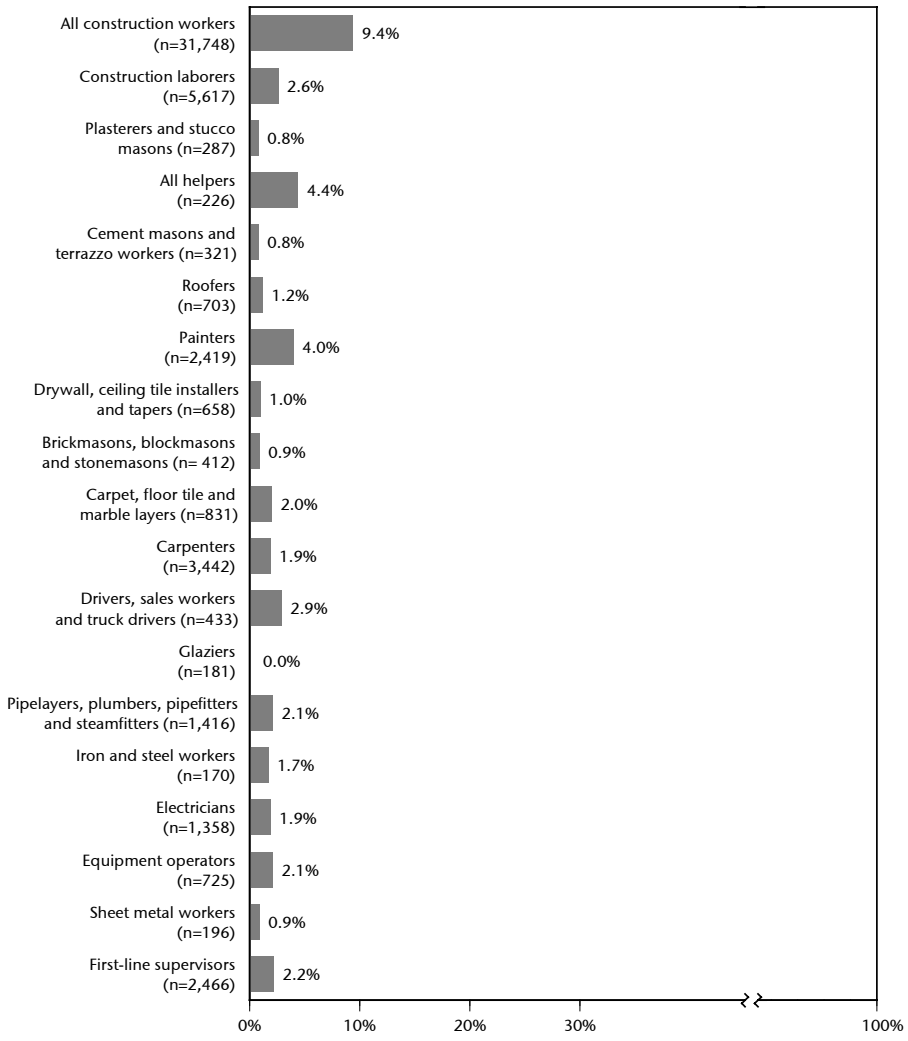


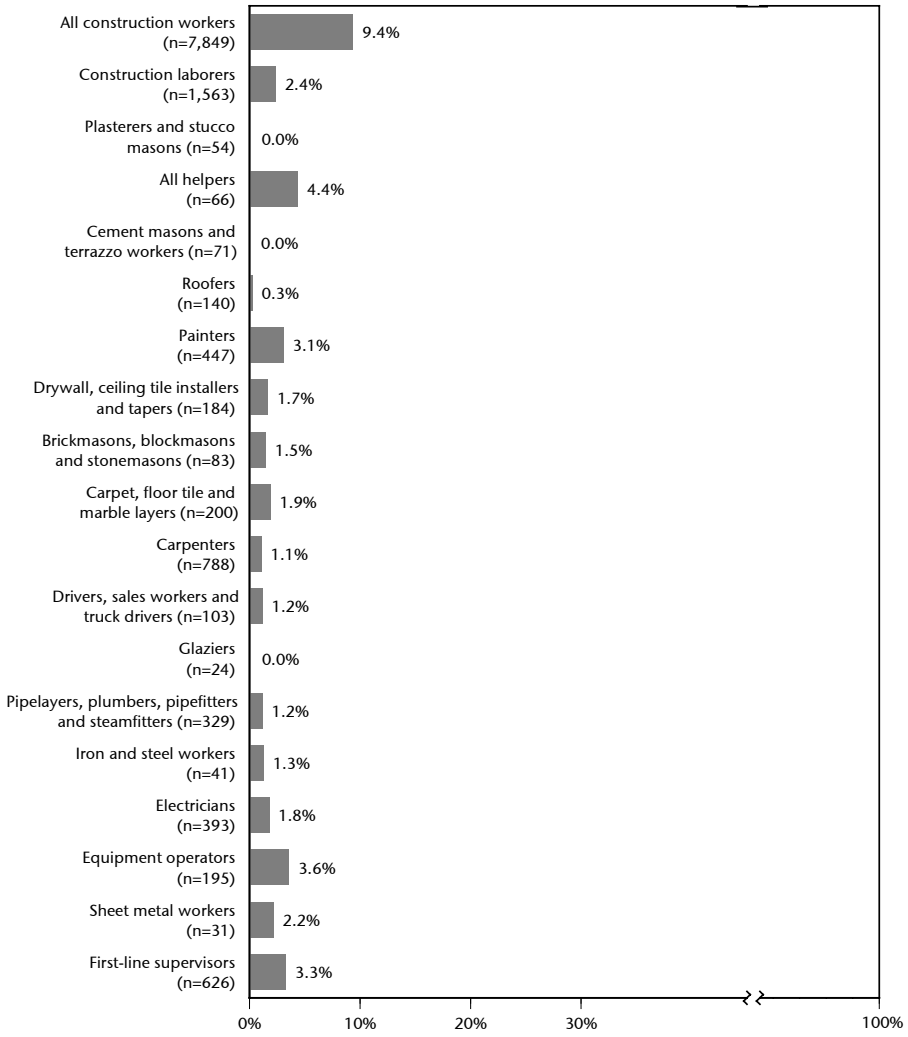
**Figure F-12.**
**Women as a percentage of construction workers in selected occupations in Southern California, 2007**

Note:

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source:

BBC Research & Consulting from 2007 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.



The study team also analyzed the percentage of women in construction occupations in San Diego County in 2000. Since small ACS sample sizes restricted analysis, 2007 figures for San Diego County are not presented.

In San Diego County, women made up slightly more than 10 percent of the construction workforce based on 2000 data, an increase from 1980. Several occupations including plasterers and stucco masons, cement masons and terrazzo workers, brick, bock and stone masons, glaziers, and sheet metal workers had zero female respondents from San Diego County in the 2000 census.

Overall, the trends seen in San Diego generally reflect those seen in all of Southern California in 2000, with some exceptions:

- Women were a larger percentage of construction laborers in San Diego County than Southern California (3.1% versus 2.6%); and
- Women were a higher percentage of painters in San Diego County (5.4%) than Southern California (4.0%).

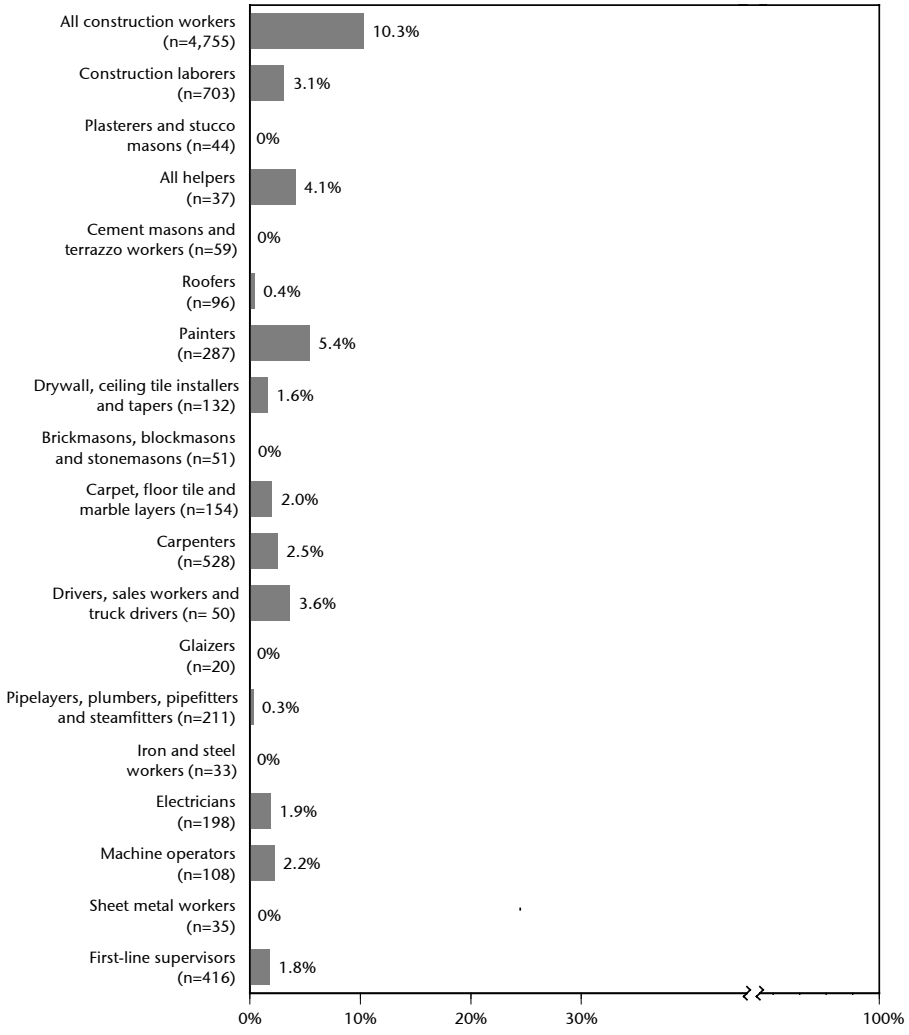
**Figure F-13.**
**Women as a percentage of construction workers in selected occupations in San Diego County, 2000**

Note:

Crane and tower operators, dredge, excavating and loading machine and dragline operators, paving, surfacing and tamping equipment operators and miscellaneous construction equipment operators were combined into the single category of equipment operators.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% sample Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.



**Relative share of minorities and women in construction who are managers.** Figures F-8 through F-13 show the representation of minorities and women among first-line supervisor positions in the Southern California and San Diego County construction industries. The study team also reviewed employment of minorities and women as managers, which is a higher position than first-line supervisor. Construction managers, on average, have more education than first-line supervisors. In Southern California in 2000, 25 percent of construction managers had at least a bachelor's degree compared with 8 percent of first-line supervisors. The figures are similar at 31 percent and 11 percent, respectively, for San Diego County. Figure F-14 shows the proportion of workers in the construction industry who reported a "manager" occupation by race/ethnicity and gender groups in 1980, 2000 and 2007.

In 2000, roughly 11 percent of non-Hispanic whites working in the Southern California construction industry were managers. About 9 percent of Asian-Pacific Americans and 10 percent of Subcontinent Asian Americans were managers (not substantial differences from the rate for non-Hispanic whites).

In contrast, other minority groups and women had statistically significant lower proportions of workers who were managers in Southern California compared to non-Hispanic whites and men:

- Only 2.4 percent of Hispanic Americans and 5.2 percent of African Americans working in construction in Southern California in 2000 were managers.
- Managers represented 8 percent of Native Americans working in construction.
- In 2000, a smaller proportion of women than men working in construction were managers (4.4% versus 6.8%).

The percentage of managers in most groups increased from 2000 to 2007. However, the percentages of African American, Subcontinent Asian American and Hispanic American managers were still small compared to non-Hispanic whites in 2007. All of these differences are statistically significant. Also, a smaller percentage of women than men working in construction were managers.

Similar to all of Southern California, African Americans and Hispanic Americans in San Diego County were less likely to be managers than were non-Hispanic whites; women were less likely to be managers than were men. Unlike Southern California, the relative number of Asian-Pacific American managers in San Diego County is substantially less than the number of non-Hispanic white managers.

**Figure F-14.**
**Percentage of construction workers who work as a manager in San Diego County, Southern California and the U.S., 1980, 2000 and 2007**

Note:

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) for the given Census/ACS year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extracts were obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

| San Diego County | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 2.5 % | 2.4 % ** | 6.8 % |
| Asian-Pacific American | 13.8 | 6.0 ** | 8.9 |
| Subcontinent Asian American | 0.0 | 27.6 | 0.0 |
| Hispanic American | 2.6 ** | 2.2 ** | 4.1 ** |
| Native American | 12.5 | 4.4 | 1.5 ** |
| Other minority | 16.7 | 5.3 | 40.7 |
| Non-Hispanic white | 5.7 | 10.4 | 16.8 |
| **Gender** | | | |
| Female | 7.8 % | 3.6 % ** | 7.8 % ** |
| Male | 5.1 | 7.6 | 11.7 |
| **All individuals** | 5.3 % | 7.2 % | 11.2 % |

| Southern California | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 1.5 % ** | 5.2 % ** | 6.9 % ** |
| Asian-Pacific American | 5.9 | 9.2 | 12.6 |
| Subcontinent Asian American | 6.9 | 10.2 | 4.3 ** |
| Hispanic American | 2.0 ** | 2.4 ** | 3.6 ** |
| Native American | 7.3 | 8.0 | 13.5 |
| Other minority | 2.8 | 9.5 | 15.8 |
| Non-Hispanic white | 5.9 | 10.7 | 14.3 |
| **Gender** | | | |
| Female | 6.3 % ** | 4.4 % ** | 6.4 % |
| Male | 4.8 | 6.8 | 8.3 |
| **All individuals** | 4.9 % | 6.6 % | 8.1 % |

| United States | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 1.4 % ** | 2.9 % ** | 4.9 % ** |
| Asian-Pacific American | 3.6 ** | 6.9 | 9.0 |
| Subcontinent Asian American | 5.2 | 10.2 ** | 9.5 |
| Hispanic American | 1.9 ** | 2.4 ** | 3.0 ** |
| Native American | 2.2 ** | 4.1 ** | 6.8 ** |
| Other minority | 4.5 | 5.8 ** | 2.7 ** |
| Non-Hispanic white | 4.6 | 7.1 | 10.0 |
| **Gender** | | | |
| Female | 5.1 % ** | 4.0 % ** | 5.8 % ** |
| Male | 4.1 | 6.2 | 8.2 |
| **All individuals** | 4.1 % | 6.0 % | 8.0 % |

## Summary of Entry and Advancement in the Construction and Engineering Industries

BBC's analysis suggests that barriers to entry into the construction and engineering industries in Southern California may begin with education and continue through occupational advancement. Initial results include:

- College education appears to be a barrier for entry of African Americans, Hispanic Americans and Native Americans into the engineering industry in San Diego County and Southern California. Disparities in educational attainment for African Americans and Hispanic Americans appear at the high school level, which may affect college opportunities.

- There is low representation of women among civil, environmental and geological engineers.

- Representation of African Americans in the construction industry is relatively low compared to all industries in Southern California and San Diego County, even among entry-level jobs.

- The representation of women in construction as a whole is relatively low.

- There appear to be disparities in the advancement of Hispanic Americans to certain construction occupations and first-line supervisor positions.

- Relatively few African Americans, Hispanic Americans and women working in construction are managers.

Many of the patterns of disparity seen in entry into the United States construction and engineering industries are also present when only considering Southern California or San Diego County.

# APPENDIX G.
# Business Ownership in the Construction and Engineering Industries

# APPENDIX G.
# Business Ownership in the Construction and Engineering Industries

BBC examined rates at which minorities, women and non-minority men owned businesses in San Diego County, Southern California and the United States.

## Business Ownership Rates

Many studies have explored differences in rates of business ownership between minorities and non-minorities in the United States. Though self-employment rates have increased for minorities and women, a number of studies indicate that different opportunities for entrepreneurship exist based on gender, ethnicity and race.[1] One study found that the explanatory power of race and ethnicity in self-employment is not substantially diminished by including other neutral factors that also affect self-employment.[2]

Disparities in the rates of business ownership have been considered by courts when reviewing state DOT implementation of the Federal DBE Program. Any disparities in business ownership rates may be especially important when considering DBE participation goals. For example, research developed for the Illinois Department of Transportation (IDOT) considered disparities in business ownership rates as a factor in adjusting the base figure for the IDOT annual DBE goal.[3]

BBC used Public Use Micro-sample (PUMS) data (based on data from the 1980 and 2000 U.S. Census) to study rates of self-employment in construction and engineering in Southern California and San Diego County, as well as data from the 2007 American Community Survey (ACS). Self-employment and business ownership are used interchangeably in the following discussion. Rates of business ownership are based on the location of a workers home, which could be different from the business location. However, 2007 ACS data indicates that only 3.3 percent of all workers living in San Diego County work at a location outside of the county.

**Construction industry.** Figure G-1 shows the percentage of workers in the construction industry who were self-employed in 1980, 2000 and 2007, by race/ethnicity and gender.

---

[1] See Waldinger, Roger and Howard E. Aldrich. 1990. *Ethnicity and Entrepreneurship*. Annual Review of Sociology. 111-135.; Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793.; Fairlie, Robert W. and Alicia M. Robb. 2006. *Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital.* Forthcoming Journal of Labor Economics.; and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses.* Russell Sage Foundation.

[2] Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793.

[3] National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

**Figure G-1.**
**Percentage of workers who were self-employed in the construction industry in San Diego County, Southern California and the U.S., 1980, 2000 and 2007**

Note:

In San Diego County, "All other minority groups" includes African Americans, Subcontinent Asian Americans, Native Americans and other minority groups. Sample sizes for these race/ethnicity groups were too small to statistically analyze individually.

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1980 and 2000 U.S. Census 5% sample and 2007 ACS Public Use Micro-sample data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

| San Diego County | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| Asian-Pacific American | 8.7 % ** | 13.1 % ** | 32.2 % |
| Hispanic American | 11.8 ** | 12.3 ** | 12.5 ** |
| All other minority groups | 10.4 ** | 15.0 ** | 25.5 |
| Non-Hispanic white | 21.0 | 23.5 | 27.9 |
| **Gender** | | | |
| Female | 13.8 % ** | 14.4 % ** | 14.8 % ** |
| Male | 19.7 | 19.9 | 22.9 |
| **All individuals** | 19.1 % | 19.3 % | 21.8 % |

| Southern California | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 13.9 % ** | 17.4 % ** | 20.9 % ** |
| Asian-Pacific American | 17.6 | 27.0 | 30.7 |
| Subcontinent Asian American | 0.0 ** | 15.1 | 40.8 |
| Hispanic American | 9.9 | 13.6 ** | 16.1 ** |
| Native American | 15.1 ** | 21.1 ** | 23.3 |
| Other minority group | 20.0 | 34.1 ** | 33.5 |
| Non-Hispanic white | 21.2 | 26.5 | 28.5 |
| **Gender** | | | |
| Female | 10.0 % ** | 15.3 % ** | 14.7 % ** |
| Male | 19.5 | 21.4 | 22.2 |
| **All individuals** | 18.5 % | 20.8 % | 21.5 % |

| Unites States | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 9.1 % ** | 14.8 % ** | 18.5 % ** |
| Asian-Pacific American | 11.2 ** | 21.3 ** | 22.7 ** |
| Subcontinent Asian American | 5.6 ** | 19.0 ** | 25.5 |
| Hispanic American | 10.7 ** | 12.6 ** | 13.8 ** |
| Native American | 9.8 ** | 18.7 ** | 22.1 ** |
| Other minority group | 17.0 | 24.1 | 16.3 ** |
| Non-Hispanic white | 18.9 | 25.1 | 26.8 |
| **Gender** | | | |
| Female | 9.4 % ** | 17.4 % ** | 18.5 % ** |
| Male | 18.5 | 23.1 | 23.6 |
| **All individuals** | 17.6 % | 22.5 % | 23.1 % |

**Business ownership rates in 2000.** In 2000, about 26 percent of non-Hispanic whites working in the construction industry in Southern California and 23 percent in San Diego County were self-employed (in incorporated or unincorporated businesses). The sample of workers in the San Diego County construction industry included only a small number of African Americans, Subcontinent Asian Americans, Native American and "other minorities", therefore, these minorities were grouped and analyzed together ("all other minority groups"). Rates of business ownership among each minority group and females working in the construction industry were lower than non-Hispanic whites:

- In 2000, about 12 percent of Hispanic Americans, 13 percent of Asian-Pacific Americans and 15 percent of "all other minority groups" working in the construction industry in San Diego County were self-employed. In each case, the difference from the non-Hispanic white rate is statistically significant at the 95 percent confidence level.

- Women-owned businesses in San Diego County at a rate of about 14 percent compared with nearly 20 percent for men, a statistically significant difference.

Due to the larger sample size, a more detailed analysis of self-employment in the construction industry across race/ethnicity and gender was possible for Southern California as a whole. Disparities in rates of business ownership existed for African Americans, Subcontinent Asian Americans, Hispanic Americans, Native Americans and women when examining 2000 data for Southern California. Each of these differences are statistically significant except for Subcontinent Asian Americans. Business ownership rates for Asian-Pacific Americans were about the same as non-Hispanic whites in 2000 for Southern California.

Similar trends of low business ownership rates for African Americans and Hispanic Americans compared to non-Hispanic whites are found in the national construction industry. Women are also self-employed at lower rates than men in the United States construction industry.

**Changes in business ownership rates in San Diego County and Southern California since 2000.** The 2007 ACS shows increases in business ownership rates since 2000 for most groups in the Southern California and San Diego County construction industry. The increases in business ownership rates for some minority groups were higher than those for non-Hispanic whites in both San Diego and Southern California. However, differences persisted in ownership rates between some minority and non-minority groups:

- In 2007, African American business ownership rates increased to about 21 percent in Southern California. However, this ownership rate was still substantially lower (statistically significant) than the 2007 rates for non-Hispanic whites (29% in Southern California).

- Compared to other minority groups, self-employment rates for Hispanic Americans increased little from 2000 to 2007. In both San Diego County and Southern California there were still large, statistically significant disparities between Hispanic American and non-Hispanic white business ownership rates in 2007.

- From 2000 to 2007, the disparity in business ownership rates in the construction industry between men and women increased in both San Diego County and Southern California as a whole. The difference remained statistically significant.

The business ownership rate for Asian-Pacific Americans in San Diego County increased from about 13 percent in 2000 to over 32 percent in 2007. The rate in 2007 exceeded that of non-Hispanic whites, although the difference is not statistically significant.

**Engineering industry.** The study team also compared self-employment rates among groups working in the engineering industry in San Diego County, Southern California and the United States. Figure G-2 shows the percentage of engineering workers who were self-employed in 1980, 2000 and 2007 by race/ethnicity and gender.

**Business ownership rates in 2000.** BBC's analysis of business ownership rates in the engineering industry focuses on Southern California in 2000 because of the larger sample sizes in this dataset. In 2000, 16 percent of non-Hispanic whites working in the Southern California engineering industry owned their own businesses (about 13% in San Diego County). Some minority groups working in the industry in 2000 had substantially lower rates of business ownership:

- Only about 9 percent of Hispanic Americans and 8 percent of African Americans working in the engineering industry in Southern California were self-employed (both differences are statistically significant from non-Hispanic whites);

- About 10 percent of Asian-Pacific Americans in Southern California owned their own businesses (a statistically significant difference from non-Hispanic whites); and

- Subcontinent Asian Americans in the engineering industry were self-employed at a rate of 11 percent in Southern California. (The lack of statistically significant differences compared with non-Hispanic whites may be due to small sample sizes).

Native Americans in Southern California had higher rates of self-employment than non-Hispanic whites in 2000. This figure is based on a relatively small sample size.

About 8 percent of women were self-employed in the Southern California engineering industry in 2000 compared to about 16 percent of men, a statistically significant difference.

The study team also examined 2000 business ownership rates among civil, environmental and geological engineers in Southern California. Although results are not presented here due to small sample sizes, disparities in rates of business ownership generally mirrored those for the industry as a whole.

**Figure G-2.**
**Percentage of workers who were self-employed in the engineering industry in San Diego County, Southern California and the U.S., 1980, 2000 and 2007**

Note:

** Denotes that the difference in proportions between the minority and non-Hispanic white groups (or female and male gender groups) is statistically significant at 95% confidence levels.

In San Diego County, "All other minority groups" includes African Americans, Subcontinent Asian Americans, Native Americans and other minority groups. Sample sizes for these race/ethnicity groups were too small to statistically analyze individually.

The data presented in this table include all business owners in the engineering industry. The study team was unable to restrict the population to the specific occupations defined in Appendix J due to small sample sizes.

Source:

BBC Research & Consulting from 1980 and 2000 U.S. Census 5% Public Use Micro-sample data and 2007 American Community Survey data. The raw data extract was obtained through the IPUMS program of the MN Population Center: http://usa.ipums.org/usa/.

| San Diego County | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| Asian-Pacific American | 12.5 % | 5.2 % ** | 0.0 % ** |
| Hispanic American | 0.0 ** | 13.4 | 9.0 |
| All other minority groups | 0.0 ** | 12.4 | 7.8 |
| Non-Hispanic white | 20.1 | 13.1 | 11.8 |
| **Gender** | | | |
| Female | 6.7 % ** | 6.5 % | 7.0 % |
| Male | 22.1 | 14.7 | 11.1 |
| **All individuals** | 18.1 % | 12.2 % | 10.0 % |

| Southern California | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 5.6 % ** | 8.2 % ** | 5.8 % ** |
| Asian-Pacific American | 10.6 ** | 9.9 ** | 9.2 ** |
| Subcontinent Asian American | 16.7 | 11.4 | 6.8 |
| Hispanic American | 7.9 ** | 9.1 ** | 8.1 ** |
| Native American | 15.4 | 22.3 | 36.4 |
| Other minority group | 0.0 ** | 25.0 | 25.3 |
| Non-Hispanic white | 19.4 | 16.0 | 15.2 |
| **Gender** | | | |
| Female | 4.7 % ** | 8.4 % ** | 7.2 % ** |
| Male | 21.5 | 16.1 | 15.1 |
| **All individuals** | 17.3 % | 13.9 % | 12.8 % |

| Unites States | 1980 | 2000 | 2007 |
|---|---|---|---|
| **Race/ethnicity** | | | |
| African American | 4.7 % ** | 4.8 % ** | 4.2 % ** |
| Asian-Pacific American | 8.1 ** | 8.2 ** | 8.1 ** |
| Subcontinent Asian American | 5.9 ** | 6.4 ** | 7.9 |
| Hispanic American | 9.6 ** | 8.8 ** | 8.6 ** |
| Native American | 10.3 | 11.8 | 10.6 |
| Other minority group | 8.3 | 11.5 | 6.3 |
| Non-Hispanic white | 14.2 | 13.1 | 12.1 |
| **Gender** | | | |
| Female | 4.1 % ** | 7.5 % ** | 7.7 % ** |
| Male | 16.4 | 14.0 | 12.6 |
| **All individuals** | 13.5 % | 12.2 % | 11.2 % |

**Changes in business ownership rates in San Diego County and Southern California since 2000.** Business ownership rates for all individuals in the engineering industry in Southern California in 2007 (ACS data) were lower than the rates found in the 2000 Census. Disparities in business ownership rates persist for African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans and women. Differences are statistically significant for each of these groups except Subcontinent Asian Americans.

Figure G-2 also present 2007 results for San Diego County. Due to the small sample size, African Americans, Subcontinent Asian Americans, Native American and "other minorities" were again grouped and analyzed together ("all other minority groups"). The rate of business ownership for non-Hispanic whites was about 11 percent. Each minority group as well as women had a lower rate of business ownership, however, the difference is only statistically significant for Asian-Pacific Americans.

**Potential causes of differences in business ownership rates.** Researchers have examined whether there are disparities in business ownership rates after considering factors such as education and age. A number of studies have found that disparities in business ownership still exist when accounting for such factors:

- Several studies have found that access to financial capital is a strong determinant of business ownership. One consistent finding is the positive relationship between start-up capital and business formation, expansion and survival.[4] One study found that housing appreciation measured at the MSA-level is a positive determinant of entry into self-employment.[5] However, unexplained differences still exist when controlling for these factors.[6]
- Education has positive effects on the probability of business ownership in most industries. However, findings from multiple studies indicate that minorities are still less likely to own a business than their non-minority counterparts with the same levels of education.[7]
- Intergenerational links contribute to the likelihood of self-employment. One study found that experience working for a self-employed family member increases the likelihood of self employment for minority groups.[8]

---

[4] See Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership.* Working paper, Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor.; and Fairlie, Robert W. and Alicia M. Robb. 2006. *Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses.* Russell Sage Foundation.

[5] Fairlie, Robert W. and Harry A. Krashinksy. 2006. Liquidity Constraints, Household Wealth and Entrepreneurship Revisited.

[6] Lofstrom, Magnus and Chunbei Wang. 2006. *Hispanic Self-Employment: A Dynamic Analysis of Business Ownership.* Working paper, Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor.

[7] See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment.* Sociological Perspectives. 79-94.

[8] See Fairlie, Robert W. and Alicia M. Robb. 2006. Race, Families and Business Success: A Comparison of African-American-, Asian-, and White-Owned Businesses. Russell Sage Foundation; and Fairlie, Robert W. and Alicia M. Robb. 2006. Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital. Forthcoming Journal of Labor Economics.

- Studies have found that time since immigration, and assimilation into American society are important determinants of self-employment. However, unexplained differences in minority-business ownership still exist when controlling for these factors.[9]

BBC developed multivariate statistical models to further explore patterns of business ownership in Southern California's construction and engineering industries.

## Regression Analysis of Business Ownership

In the discussion above, BBC identified statistically significant disparities in rates of business ownership for some minority groups in the Southern California construction and engineering industries.

There is extensive literature examining whether race- and gender-neutral factors such as access to financial capital, education, age, family characteristics (e.g., marital status) and other factors can help explain differences in rates of business ownership. This issue has also been examined in other disparity studies. Prior studies in Minnesota[10] and Illinois[11] have conducted econometric analyses to investigate whether or not disparities in business ownership among race/ethnicity and gender groups in the combined construction and engineering industry remain after controlling for neutral factors. These studies have incorporated probit econometric models using PUMS data from the 2000 Census and have been among the materials submitted to the courts in subsequent litigation concerning states' implementation of the Federal DBE Program.

In line with these previous studies, BBC developed a probit regression model to further examine differences in the rates of business ownership among workers in the San Diego County and Southern California construction and engineering industries and to explore how neutral factors, such as age, education, access to capital and creditworthiness (among others) might account for at least a portion of these differences.

BBC developed a probit model for Southern California using 2000 PUMS data, conducting three separate regressions: one for the combined construction and engineering industries, one for construction workers only and one for engineering workers only. In total, BBC's 2000 Southern California model included 28,621 observations.

BBC developed a similar Southern California model using 2007 ACS data, conducting regressions for the combined construction and engineering industries and the construction industry alone. In total, the 2007 Southern California model included 8,311 observations. Due to the small sample size for engineering, BBC did not perform a regression for engineering workers alone in 2007.

---

[9] See Fairlie, Robert W. and Bruce D. Meyer. 1996. *Ethnic and Racial Self-Employment Differences and Possible Explanations.* The Journal of Human Resources, Volume 31, Issue 4, 757-793; and Butler, John Sibley and Cedric Herring. 1991. *Ethnicity and Entrepreneurship in America: Toward an Explanation of Racial and Ethnic Group Variations in Self-Employment.* Sociological Perspectives. 79-94.

[10] National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation.

[11] National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

The probit model functional form that BBC used is consistent with other research. The probit model represents the effects of a number of independent variables in terms of a single, dichotomous dependent variable — in this case business ownership. The dependent variable is binary — coded as a "1" for individuals who are self-employed and a "0" for individuals who are not self-employed. The model enables estimation of the probability that a worker in an industry is also a business owner. The study team excluded observations where the Census Bureau had imputed self-employment.

The extensive literature on business ownership explains the theoretical basis for business ownership regression models. BBC's model specification is based on models developed by past researchers at the national level or state level and is very similar to models used in other studies previously reviewed by the courts. Independent variables include:

- Personal characteristics potentially linked to the likelihood of business ownership (age, age-squared, marital status, number of children and elderly people in the household, ability to speak English and disability status);

- Indicators of educational attainment;

- Measures and indicators related to personal financial resources and constraints (home ownership, home value, monthly mortgage payment, dividend and interest income and additional household income from a spouse or unmarried partner); and

- Variables representing the race/ethnicity and gender of the individual.

**Results for the Southern California construction and engineering industries.** BBC performed regression analyses for workers in the combined construction and engineering industries. Separate analyses were performed using 2000 Census data and 2007 ACS data.

**Results for the combined construction and engineering industries in 2000.** Figure G-3 presents the coefficients and t-statistics for the 2000 probit model that combines individuals working in both the construction and engineering industries.

**Figure G-3.**
**Southern California combined construction and engineering business ownership probit model, 2000**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | -2.903 | -22.23 ** |
| Age | 0.084 | 13.34 ** |
| Age-squared | -0.001 | -9.47 ** |
| Married | -0.018 | -0.73 |
| Disabled | 0.002 | 0.08 |
| Children in household | -0.004 | -0.42 |
| Number of people over 65 in household | -0.107 | -3.51 ** |
| Owns home | -0.198 | -6.99 ** |
| Home value ($000s) | 0.001 | 13.79 ** |
| Monthly mortgage payment ($000s) | -0.010 | -0.59 |
| Interest and dividend income ($000s) | 0.001 | 1.57 |
| Income of spouse or partner ($000s) | 0.001 | 2.65 ** |
| Speaks English well | 0.034 | 0.97 |
| Less than high school education | -0.060 | -2.00 * |
| Some college | 0.023 | 0.89 |
| Four-year degree | -0.107 | -3.07 ** |
| Advanced degree | -0.224 | -4.50 ** |
| African American | -0.233 | -3.95 ** |
| Asian-Pacific American | -0.064 | -1.48 |
| Subcontinent Asian American | -0.445 | -2.54 ** |
| Hispanic American | -0.186 | -7.02 ** |
| Native American | -0.069 | -0.82 |
| Other minority group | 0.320 | 3.49 ** |
| Female | -0.441 | -13.42 ** |

Note: *, ** Denote significance at the 90% and 95% confidence levels, respectively.
Source BBC Research & Consulting based on analysis of 2000 Census 5% Public Use Micro-sample data.

The model indicates that several neutral factors are statistically significant in predicting the probability of business ownership in these industries:

- Older individuals are more likely to be business owners, but this marginal effect declines for the oldest individuals;
- Income from a spouse or partner is positively correlated with being a business owner;
- Having less than a high school diploma, decreases the likelihood of being a business owner;
- A four-year college degree or an advanced degree also decreases the likelihood of being a business owner, compared to individuals with just a high school degree;
- Having people over 65 in the household decreases the likelihood of business ownership; and
- The combination of a negative coefficient for the indicator of homeownership and a positive coefficient for home value implies that homeownership only increases the likelihood of business ownership for individuals with homes valued above approximately $160,000.

Even after controlling for the neutral factors available in the PUMS data, statistically significant disparities in rates of business ownership remain for African Americans, Subcontinent Asian Americans, Hispanic Americans and women. This model indicates that individuals in the "other minority" category may be more likely to own a business in the combined construction and engineering industries.

**Results for the combined construction and engineering industries in 2007.** Figure G-4 presents the results for the probit regression for the combined Southern California construction and engineering industries using 2007 ACS data. Many of the same neutral factors as before are statistically significant in predicting the probability of being a business owner. The regression results indicate that age, education level, homeownership and home value affect the probability of an individual becoming a business owner. The model for 2007 also shows some differences in the impact of neutral factors on business ownership:

- Having less than a high school diploma is no longer statistically significant;
- People over 65 in the household do not have a statistically significant impact on the likelihood of business ownership; and
- Having a second form of income from a spouse or partner is not a significant factor in determining the probability of business ownership.

The 2007 model indicates that after controlling for neutral factors, statistically significant disparities in engineering and construction business ownership rates remain for Hispanic Americans and women. African Americans are also less likely to own businesses, although the difference is not statistically significant (possibly due to small sample size).

**Figure G-4.**
**Southern California combined construction and engineering business ownership probit model, 2007**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | -2.769 | -11.46 ** |
| Age | 0.085 | 7.23 ** |
| Age-squared | -0.001 | -5.12 ** |
| Married | 0.029 | 0.62 |
| Disabled | -0.022 | -0.23 |
| Children in household | -0.028 | -1.57 |
| Number of people over 65 in household | 0.013 | 0.24 |
| Owns home | -0.401 | -5.59 ** |
| Home value ($000s) | 0.001 | 6.78 ** |
| Monthly mortgage payment ($000s) | 0.020 | 1.11 |
| Interest and dividend income ($000s) | 0.001 | 1.25 |
| Income of spouse or partner ($000s) | 0.000 | 0.87 |
| Speaks English well | -0.036 | -0.59 |
| Less than high school education | -0.083 | -1.50 |
| Some college | -0.051 | -1.01 |
| Four-year degree | -0.267 | -3.99 ** |
| Advanced degree | -0.300 | -3.06 ** |
| African American | -0.231 | -1.85 |
| Asian-Pacific American | -0.035 | -0.41 |
| Subcontinent Asian American | -0.056 | -0.16 |
| Hispanic American | -0.221 | -4.39 ** |
| Native American | -0.084 | -0.44 |
| Other minority group | 0.228 | 0.76 |
| Female | -0.489 | -7.86 ** |

Note: ** Denotes significance at the 95% confidence level.

Source BBC Research & Consulting based on analysis of 2007 ACS Public Use Micro-sample data.

**Results specific to the Southern California construction industry.** It is possible that the roles of neutral factors, and perhaps race/ethnicity and gender, on self-employment in the construction industry differ from those in the engineering industry. To examine this possibility, BBC performed separate regression analyses for each industry.

**Southern California construction industry in 2000.** Figure G-5 presents the results of the probit model of self-employment in the Southern California construction industry in 2000.

**Figure G-5.**
**Southern California construction business ownership probit model, 2000**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | -2.868 | -21.08 ** |
| Age | 0.082 | 12.44 ** |
| Age-squared | -0.001 | -8.84 ** |
| Married | -0.013 | -0.52 |
| Disabled | -0.005 | -0.17 |
| Children in household | -0.007 | -0.71 |
| Number of people over 65 in household | -0.110 | -3.38 ** |
| Owns home | -0.203 | -6.74 ** |
| Home value ($000s) | 0.001 | 13.12 ** |
| Monthly mortgage payment ($000s) | -0.008 | -0.40 |
| Interest and dividend income ($000s) | 0.001 | 1.09 |
| Income of spouse or partner ($000s) | 0.001 | 1.96 * |
| Speaks English well | 0.056 | 1.59 |
| Less than high school education | -0.051 | -1.71 |
| Some college | 0.062 | 2.34 ** |
| Four-year degree | 0.003 | 0.07 |
| Advanced degree | -0.118 | -1.73 |
| African American | -0.223 | -3.61 ** |
| Asian-Pacific American | 0.090 | 1.74 |
| Subcontinent Asian American | -0.577 | -2.28 ** |
| Hispanic American | -0.198 | -7.22 ** |
| Native American | -0.125 | -1.41 |
| Other minority group | 0.304 | 3.01 ** |
| Female | -0.404 | -10.65 ** |

Note: *,** Denote significance at the 90% and 95% confidence levels, respectively.
Source: BBC Research & Consulting based on analysis of 2000 Census 5% Public Use Micro-sample data.

Results of the model for the construction industry alone are generally similar to the 2000 model for the combined industries, with the following exceptions:

- Having some college education significantly increases the likelihood of being a business owner in construction but neither a four-year degree nor an advanced degree has a statistically significant impact on business ownership rates; and

- Having less than a high school diploma does not have a statistically significant impact on the probability of ownership in the construction industry.

The construction business ownership model for 2000 indicates statistically significant disparities in the rate of business ownership for African Americans, Subcontinent Asian Americans, Hispanic Americans and women after accounting for neutral factors. Similar to the 2000 combined model, results for the construction industry alone indicate individuals in the "other minority" category may be more likely to be business owners.

The probit modeling approach enables estimation of how many business owners there would be among each minority group with significant disparities in self-employment rates if they had the same probability of business ownership as similarly situated non-Hispanic white males. To conduct this next step in the analysis, BBC performed a probit model regression for business ownership in the construction industry using only the non-Hispanic white males in the dataset.[12] BBC then applied the coefficients from this version of the model to the mean characteristics of the minority and female groups in the dataset to calculate the probability of business ownership in the absence of race-related, ethnicity-related and gender-related effects. In this way BBC was able to simulate the rate of business ownership for similarly situated non-Hispanic white males.

Figure G-6 shows these simulated ("benchmark") business ownership rates and compares them to the actual, observed mean probability of business ownership for African Americans, Subcontinent Asian Americans, Hispanic Americans, individuals classified as 'other minority' and women (all statistically significant disparities). This simulation approach has also been incorporated in other disparity studies reviewed by the courts.

**Figure G-6.**
**Comparison of actual construction business ownership rates to simulated rates under non-Hispanic white male business environment for groups with statistically significant disparities, 2000**

| Group | Self-employment rate | | Disparity index (100 = parity) |
|---|---|---|---|
| | Actual | Benchmark | |
| African American | 17.8% | 24.9% | 71 |
| Subcontinent Asian American | 15.1% | 30.1% | 50 |
| Hispanic American | 13.7% | 21.5% | 64 |
| Other minority group | 34.1% | 26.4% | 129 |
| Female | 15.4% | 27.1% | 57 |

Note: As the benchmark figure can only be estimated for records with a full set of observed independent variables, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in figure G-1.

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

These results suggest that there are only 71 percent as many African American-owned construction businesses in Southern California as one would anticipate if African Americans working in the industry owned businesses at the same rate as similarly situated non-Hispanic white males. The disparities are somewhat larger for Hispanic Americans, Subcontinent Asian Americans and women. On the other hand, individuals classified as "other minority" own businesses in the Southern California construction industry at rates higher than similarly situated non-Hispanic white males.

[12] This version of the model excludes the race, ethnicity and gender indicator variables since the value for all of those variables would be zero.

**Southern California construction industry in 2007.** The study team repeated the probit regression and disparity analysis for business ownership in the construction industry in Southern California using 2007 ACS data (a smaller data set than the 2000 Census). The results of the probit regression are presented in Figure G-7.

**Figure G-7.**
**Southern California construction business ownership probit model, 2007**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | -2.744 | -10.81 ** |
| Age | 0.084 | 6.71 ** |
| Age-squared | -0.001 | -4.69 ** |
| Married | 0.036 | 0.71 |
| Disabled | -0.075 | -0.72 |
| Children in household | -0.033 | -1.77 |
| Number of people over 65 in household | 0.015 | 0.26 |
| Owns home | -0.415 | -5.42 ** |
| Home value ($000s) | 0.001 | 6.31 ** |
| Monthly mortgage payment ($000s) | 0.029 | 1.43 |
| Interest and dividend income ($000s) | 0.001 | 0.85 |
| Income of spouse or partner ($000s) | 0.001 | 1.05 |
| Speaks English well | -0.012 | -0.20 |
| Less than high school education | -0.078 | -1.42 |
| Some college | -0.033 | -0.63 |
| Four-year degree | -0.126 | -1.60 |
| Advanced degree | -0.073 | -0.48 |
| African American | -0.226 | -1.70 |
| Asian-Pacific American | 0.073 | 0.72 |
| Subcontinent Asian American | 0.256 | 0.56 |
| Hispanic American | -0.238 | -4.53 ** |
| Native American | -0.211 | -1.05 |
| Other minority group | 0.198 | 0.60 |
| Female | -0.488 | -6.82 ** |

Note: ** Denotes significance at the 95% confidence level.
Source: BBC Research & Consulting based on analysis of 2007 ACS Public Use Micro-sample data.

The probit regression results for 2007 are similar to those for 2000 with some differences in the significance of neutral factors and race/ethnicity factors on the probability of business ownership. Notable differences in neutral factors include:

- Having people over 65 in the household and a second form of income from a spouse or partner are not statistically significant indicators of the probability of business ownership; and

- Having some college education is not a statistically significant determinant of ownership in the 2007 model.

In the 2007 model, statistically significant disparities in business ownership rates for Hispanic Americans and females remain. However, the disparity for African Americans, while large, is not statistically significant (which could be due to smaller sample sizes).

The study team also used 2007 ACS data to generate disparity indices, using the same methodology described above. The results of this analysis are presented in Figure G-8.

**Figure G-8.**
**Comparison of actual construction business ownership rates to simulated rates under non-Hispanic white male business environment for groups with statistically significant disparities, 2007**

| Group | Self-employment rate | | Disparity index (100 = parity) |
|---|---|---|---|
| | Actual | Benchmark | |
| Hispanic American | 16.0% | 28.4% | 56 |
| Female | 14.8% | 29.5% | 50 |

Note: As the benchmark figure can only be estimated for records with a full set of observed independent variables, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in figure G-1.

Source: BBC Research & consulting from statistical models of 2007 American Community Survey data.

The indices imply that in Southern California in 2007, there are only 56 percent as many Hispanic Americans-owned businesses in the construction industry as would be expected if Hispanic Americans owned businesses at the same rate as similarly situated non-Hispanic white males. Women owned businesses at an even lower rate compared to non-Hispanic white males with similar neutral characteristics. The results from this model indicate a greater disparity for both groups in 2007 than in 2000.

**Results specific to the Southern California engineering industry.** BBC also developed a probit business ownership model for the Southern California engineering industry alone using 2000 Census data. Due to a small sample size for engineering workers in the 2007 ACS, the study team did not perform a regression for engineering-only workers for 2007. Figure G-9 presents the results of the 2000 engineering-only model.

**Figure G-9.**
**Southern California engineering business ownership probit model, 2000**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | -3.852 | -6.86 ** |
| Age | 0.110 | 4.81 ** |
| Age-squared | -0.001 | -3.49 ** |
| Married | -0.013 | -0.18 |
| Disabled | -0.023 | -0.22 |
| Children in household | -0.021 | -0.72 |
| Number of people over 65 in household | -0.108 | -1.19 |
| Owns home | -0.236 | -2.54 ** |
| Home value ($000s) | 0.001 | 4.60 ** |
| Monthly mortgage payment ($000s) | -0.041 | -1.00 |
| Interest and dividend income ($000s) | 0.001 | 0.85 |
| Income of spouse or partner ($000s) | 0.002 | 2.86 ** |
| Speaks English well | -0.276 | -1.26 |
| Less than high school education | -0.438 | -1.87 |
| Some college | 0.022 | 0.18 |
| Four-year degree | 0.222 | 1.84 |
| Advanced degree | 0.252 | 1.93 |
| African American | -0.294 | -1.36 |
| Asian-Pacific American | -0.247 | -2.85 ** |
| Subcontinent Asian American | -0.233 | -0.94 |
| Hispanic American | 0.036 | 0.36 |
| Native American | 0.514 | 1.77 |
| Other minority group | 0.479 | 2.12 * |
| Female | -0.332 | -4.61 ** |

Note: *,** Denote significance at the 90% and 95% confidence levels, respectively.
Source: BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

Neutral factors associated with business ownership in the 2000 Southern California engineering industry include:

- Older individuals are more likely to be business owners, but this marginal effect declines for the oldest individuals;
- Income from a spouse or partner is positively correlated with being a business owner; and
- The combination of a negative coefficient for the indicator of homeownership and a positive coefficient for home value implies that homeownership only increases the likelihood of business ownership for individuals with homes valued above approximately $250,000.

After accounting for the neutral factors available in the PUMS data, the engineering business ownership model indicates statistically significant disparities in the business ownership rates for Asian-Pacific Americans and women. Disparities for African Americans and Subcontinent Asian Americans are the same magnitude, but not statistically significant. The engineering regression model indicates individuals classified as "other minority" are more likely to be business owners, similar to the 2000 combined and construction models.

The study team simulated engineering business ownership rates for groups showing statistically significant differences based on the environment for non-Hispanic white males in the Southern California engineering industry. Figure G-10 shows the simulated business ownership rates and compares them to the actual, observed mean probability of engineering business ownership for groups where disparities are statistically significant.

**Figure G-10.**
**Comparison of actual engineering business ownership rates to simulated rates under non-Hispanic white male business environment for groups with significant disparities, 2000**

| Group | Self-employment rate | | Disparity index (100 = parity) |
|---|---|---|---|
| | Actual | Benchmark | |
| Asian-Pacific American | 10.0% | 15.2% | 66 |
| Other minority group | 25.0% | 14.3% | 175 |
| Female | 8.3% | 14.3% | 58 |

Source: BBC Research & Consulting from statistical models of 2000 Census of Population data.

Note: As the benchmark figure can only be estimated for records with a full set of observed independent variables, comparison is made with only this subset of the sample. For this reason, actual self-employment rates may differ slightly from those in figure G-1.

These results suggest:

- Women experience about the same levels of disparity in business ownership in the Southern California engineering and construction industries;
- Asian-Pacific Americans own businesses in the engineering industry at a rate about two-thirds the rate for similarly situated non-Hispanic white men; and
- Individuals classified as "other minority" own businesses at higher rates than similarly situated non-Hispanic white men in the engineering industry.

## Summary of Business Ownership in the Construction and Engineering Industries

At the time of this report, the most extensive data on business ownership comes from the 2000 Census. The analyses of these data provide the highest level of accuracy and detail and are the focus of this summary.

In 2000, disparities in business ownership were present in the construction industry.

- Business ownership rates in the construction industry were lower for African Americans than for non-Hispanic whites in both San Diego County and Southern California — the difference is statistically significant for Southern California.

- Hispanic Americans working in both the San Diego County and Southern California construction industries had ownership rates lower than that of non-Hispanic whites (both statistically significant differences).

- The business ownership rates for women in the San Diego County and Southern California construction industries were lower than ownership rates for men (both statistically significant differences).

- Lower business ownership rates (statistically significant) also existed for Asian-Pacific Americans in the San Diego County construction industry. No statistically significant difference is present between these two groups in Southern California as a whole.

Some disparities were also found in the engineering industry in 2000.

- Compared to non-Hispanic whites, ownership rates in both the San Diego County and Southern California engineering industries for Asian-Pacific Americans were lower and statistically significant.

- The business ownership rates for women in the San Diego County and Southern California engineering industries were lower than ownership rates for men (both statistically significant differences).

- A statistically significant disparity was present for Hispanic Americans in the Southern California engineering industry.

Probit regression models were used to investigate the presence of race/ethnicity and gender disparities in business ownership in Southern California after accounting for the effects of neutral factors.

- Statistically significant disparities in construction business ownership rates were found for African Americans, Subcontinent Asian Americans, Hispanic Americans and women in 2000.

- Statistically significant disparities were found for Asian-Pacific Americans and women in the engineering industry in 2000.

# APPENDIX H.
# Access to Capital for Business Formation and Success

# APPENDIX H.
# Access to Capital for Business Formation and Success

One of the factors researchers have examined when studying business formation and success is access to capital. If discrimination exists in capital markets, minorities and women may be prevented from acquiring the capital necessary to start or expand a business.[1]

Appendix G investigates several other factors that may lead to differences in business ownership. Appendix I explores factors that may explain differences in the success of businesses. Access to capital is a factor that overlaps both these topics and is explored in this Appendix.

BBC begins by studying homeownership and mortgage lending, as home equity is an important source of capital to start and expand businesses. We then examine access to business loans.

## Homeownership and Mortgage Lending

BBC analyzed homeownership and the mortgage lending industry to explore differences across race/ethnicity and gender that may lead to disparities in access to capital.

**Homeownership.** Wealth created through homeownership can be an important source of capital to start or expand a business.[2] Any barriers to homeownership and home equity growth for minorities or women can affect business opportunities for these groups. Similarly, any barriers to accessing the equity in a home through home mortgages can also affect the capital available for new or expanding businesses. In sum:

- A home is a tangible asset that provides borrowing power;[3]
- Wealth that accrues from housing equity and tax savings from homeownership contributes to capital formation;[4]
- Mortgage loans have traditionally been the second largest loan type for small businesses behind lines of credit;[5] and
- Homeownership is associated with an estimated 30 percent reduction in probability of loan denial for small businesses.[6]

---

[1] For an example, see: Coleman, Susan. Small Firm Sources of Debt Capital: A Comparison by Gender, Race and Ethnicity. University of Hartford.

[2] The recent (beginning in late 2006) housing and mortgage crisis has substantially impacted the ability of small businesses to secure loans through home equity. A discussion of the consequences to small businesses and MBE/WBEs is provided at the end of this section.

[3] Nevin, Allen. 2006. "Homeownership in California: A CBIA Economic Treatise." *California Building Industry Association.* 2.

[4] Jackman, Mary R. and Robert W. Jackman 1980. "Racial Inequalities in Home Ownership." *Social Forces.* 58. 1221-1234.

[5] Berger, Allen N. and Gregory F. Udell. 1998. "The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle." *Journal of Banking and Finance.* 22.

Home equity as a source of business capital is especially important in California where past house price appreciation has caused home value to be a substantial portion of many households' wealth.[7] The study team first considered homeownership rates and home prices in San Diego County, Southern California and the U.S. before turning to data on the home mortgage market.

**Homeownership rates.** Homeownership is the first step toward building home equity that can be tapped for other purposes. Many studies document past discrimination in the United States' housing market. For example, the United States has a history of restrictive real estate covenants and property laws affecting the ownership rights of minorities and women.[8] In the past, a woman's participation in homeownership was ancillary to that of her husband and parents.[9]

Figure H-1 shows rates of homeownership for minority groups and non-Hispanic whites in San Diego County, Southern California and the nation in 2000 and 2007. About 33 percent of African American households and 39 percent of Hispanic American households in San Diego County were homeowners in 2000, compared with 63 percent of non-Hispanic whites in the county.

Homeownership rates were also lower for Subcontinent Asian Americans, Native Americans and Asian-Pacific Americans in San Diego County than for non-Hispanic whites. Similar disparities for these groups are found in Southern California. These disparities in homeownership rates are also present in the 2007 data, although overall homeownership rates were higher in both San Diego and Southern California. One exception is Asian-Pacific Americans, who had the same home ownership rate as non-Hispanic whites in San Diego in 2007.

Generally, rates of homeownership were lower in San Diego and Southern California than the nation, in part due to the historically high price of homes in the state.[10]

---

[6] Cavalluzzo, Ken and John Wolken. 2005. "Small Business Loan Turndowns, Personal Wealth and Discrimination." *Journal of Business.* 78:2153-2178.

[7] Myers, Dowell and Xin Gao. 2004. "Trajectories of Homeownership in California, 1980 to 2000, and 2000 to 2030." *California Housing Futures research program.* Fannie Mae Foundation.

[8] Ladd, Helen F. 1982. "Equal Credit Opportunity: Women and Mortgage Credit." *The American Economic Review*. 72:166-170.

[9] Card, Emily. 1980. "Women, Housing Access, and Mortgage Credit." *Signs.* 5:215-219.

[10] Quigley, John M. and Steven Raphael. 2004. "Regulation and the High Cost of Housing in California." *University of California, Berkeley.*

**Figure H-1.**
**Homeownership rates, 2000 and 2007**

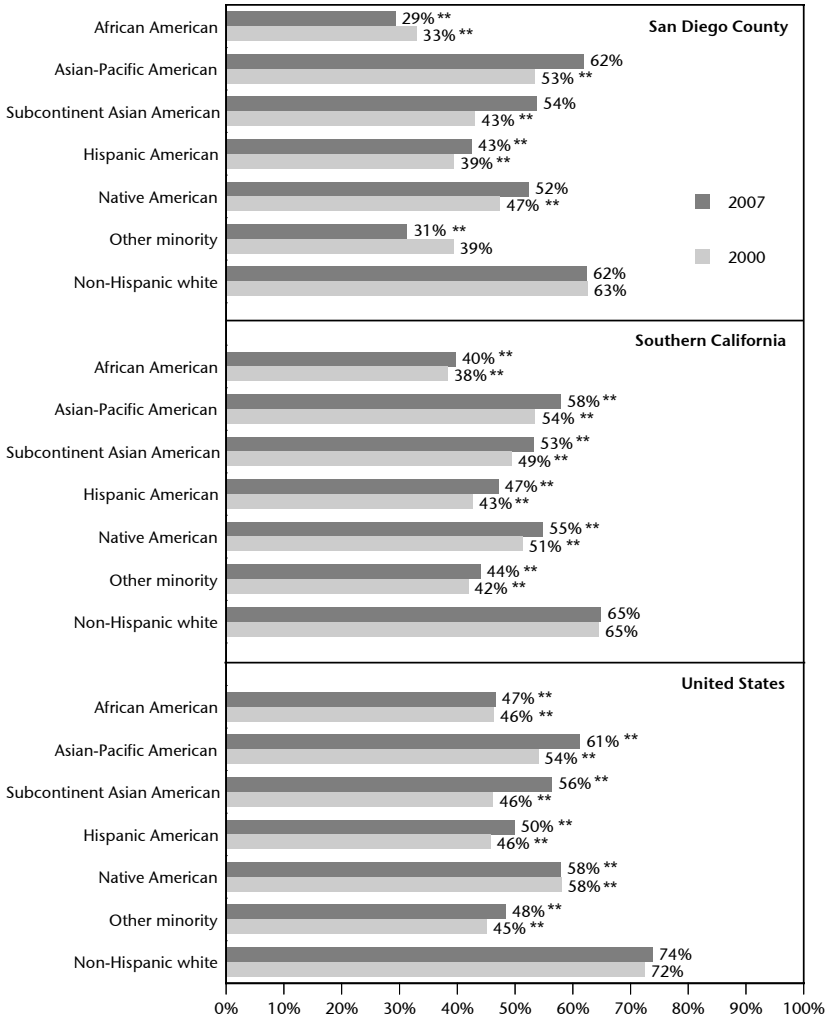
Note:

The sample universe is all households.

** Denotes that the difference in proportions from non-Hispanic white for the given year is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting and the 2000 U.S. Census and 2007 American Community Survey data.




BBC also examined homeownership rates for heads of household who worked in the construction and engineering industries. Disparities in homeownership rates found for all San Diego County and Southern California households were also observed for households in which the head of household worked in the construction industry. Differences in homeownership rates also persist for African Americans and Hispanic Americans working in the engineering industry.

Different rates of homeownership in part reflect lower incomes for minorities. This may be self-reinforcing, as low wealth puts individuals at a disadvantage in becoming homeowners, which has historically been an effective path to building wealth. One study found statistically significant results indicating that the probability of homeownership is considerably lower for African Americans than it is for comparable non-Hispanic whites throughout the U.S.[11] A study in Los Angeles found different results. Controls for types of income indicated that probabilities of homeownership for African American households in South-Central Los Angeles and San Bernardino County were identical to white households.[12]

[11] Jackman. 1980. "Racial Inequalities in Home Ownership."

[12] Gabriel, Stuart and Gary Painter. 2001. "Pathways to Homeownership: An Analysis of the Residential Location and Homeownership Choices of Black Households in Los Angeles." *USC Finance & Business Econ.* Working Paper No. 01-22.

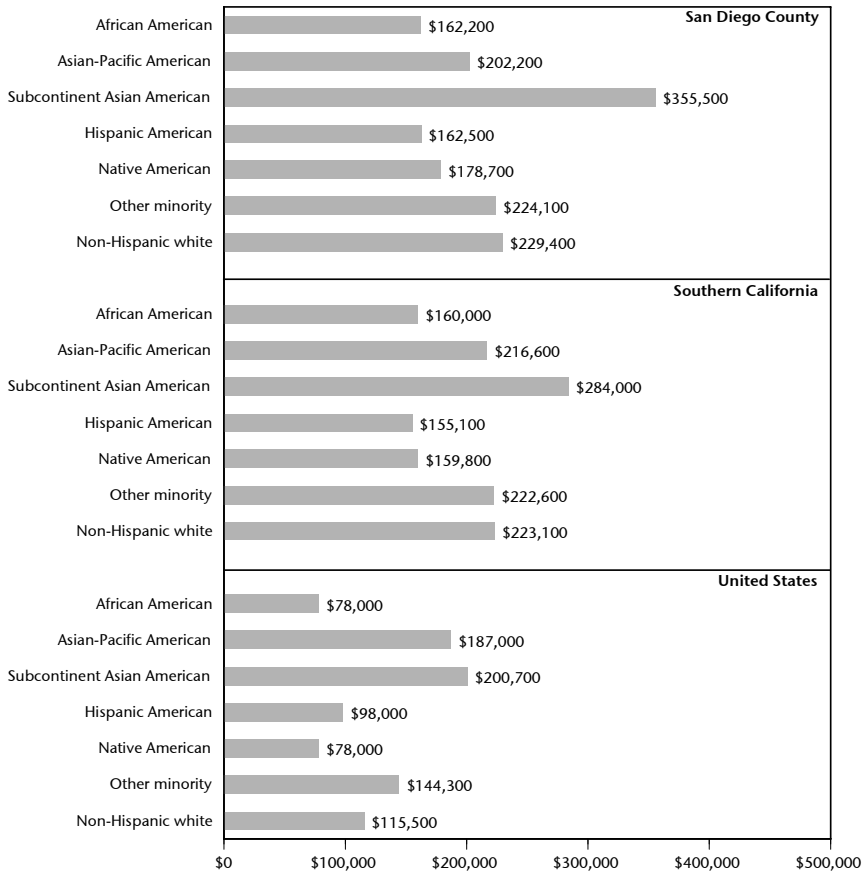
**Home values.** Recent research has found that homeownership and the value of the home is a direct indicator of capital available to form or expand businesses. For example, using microdata from matched Current Population Surveys (1993-2004), one study found that differences in housing appreciation between metropolitan areas affected entry into self-employment. The study indicated that a 10 percent annual increase in housing equity increases the mean probability of entrepreneurship by approximately 20 percent.[13]

Using U.S. Bureau of the Census data on home values in 2000 and 2007, BBC compared median home values by race and ethnicity. Figure H-2 presents 2000 median home values in San Diego County, Southern California and the United States.

**Figure H-2.**
**Median home value, 2000**

Note:
The sample universe is all owner-occupied housing units.

Source:
BBC Research & Consulting from 2000 U.S. Census data.




The median home value of non-Hispanic whites in San Diego County in 2000 was $229,400, substantially above the median value of homes owned by African Americans, Hispanic Americans and Native Americans. The median home value for Asian-Pacific Americans was closer to the value for non-Hispanic whites. On the other hand, the median home value for Subcontinent Asian Americans was substantially larger than the non-Hispanic white value.

The differences in median home value for minorities compared to non-Hispanic whites in San Diego were similar to the differences seen in Southern California and the United States as a whole.

[13] Fairlie, Robert W. and Harry A. Krashinky. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited." *IZA Discussion Paper.* No. 2201.

Figure H-3 presents median home values by race/ethnicity in San Diego County, Southern California and the U.S. based on 2007 ACS data. Similar to the figure for 2000, African Americans, Hispanic Americans and Native Americans had substantially lower median home values than non-Hispanic whites in both San Diego County and Southern California.

In the United States, median home values for African Americans and Native Americans remained well below value for non-Hispanic whites in 2007. The national median value for Hispanic Americans surpassed the value for non-Hispanic whites in 2007.

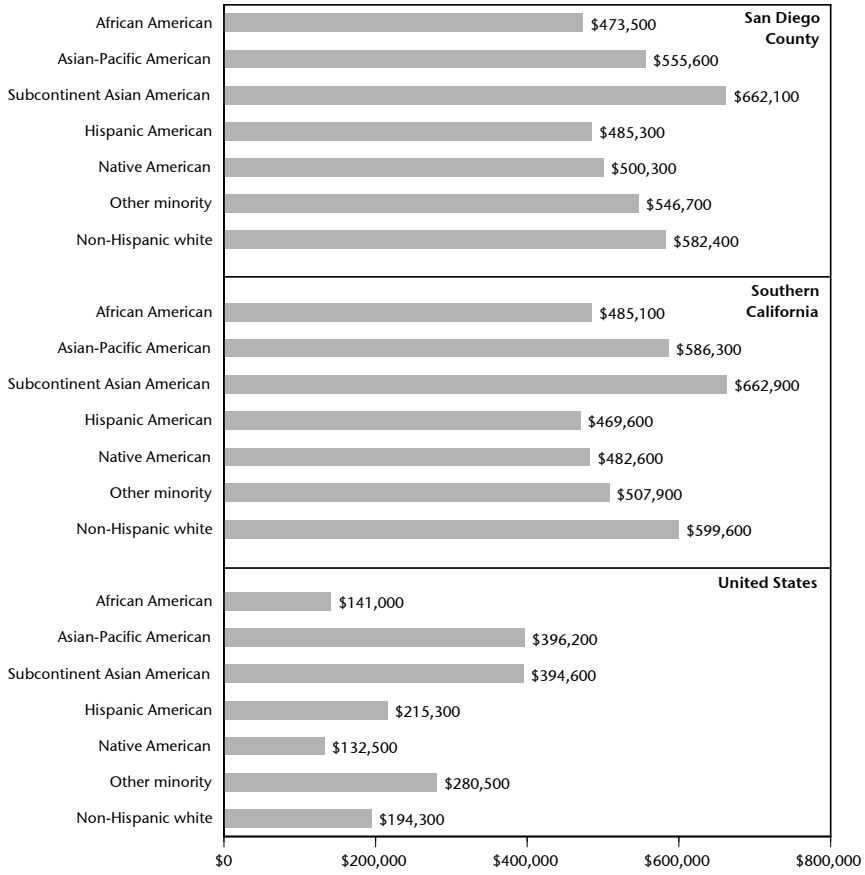
**Figure H-3.**
**Median home value, 2007**

Note:

The sample universe is all owner-occupied housing units.

Source:

BBC Research & Consulting from 2007 American Community Survey data.



**Mortgage lending.** Minorities may be denied opportunities to own homes, to purchase more expensive homes or to access equity in their homes if they are discriminated against when applying for home mortgages. BBC explored this issue.

The best source of information concerning mortgage lending discrimination comes from Home Mortgage Disclosure Act (HMDA) data, which contain information on mortgage loan applications for financial institutions, savings banks, credit unions and some mortgage companies.[14] These data include information about the location, dollar amount, and types of loans made, as well as race and ethnicity, income, and credit characteristics of all loan applicants. The data are available for home purchases, loan refinances, and home improvement loans.

BBC examined statistics provided by KnowledgePlex on conventional loan denial rates for high-income borrowers. Conventional loans are loans not insured by a government program. High-income borrowers are those households with 120 percent or more of the U.S. Department of Housing and Urban Development (HUD) area median family income.[15]

Loan denial rates are calculated as a share of mortgage loan applications which is equal to the sum of denied and originated loan applications, but excludes terminations of the application process by the potential borrowers.

Data on loan denial rates for mortgages in San Diego County show higher denial rates for minority high-income households than for non-Hispanic white high-income households. Figure H-4 reports loan denial rates for San Diego County, Southern California and for the nation in 2005, the most recent numbers available from KnowledgePlex. Among high-income households applying for mortgages, 22 percent of African American applicants in San Diego County had their applications denied compared with less than 14 percent of non-Hispanic white households. Loan denial rates were also higher for Native Americans, Hispanic Americans and Asian Americans compared to non-Hispanic whites.

The patterns of loan denial rates by race and ethnicity in San Diego County mirrored those of Southern California and the United States in 2005, although San Diego loan denial rates were slightly lower than Southern California and national rates for all minority groups.

[14] Financial institutions are required to report HMDA data if they have assets of more than $32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in an Metropolitan Statistical Area (or originated five or more home purchase loans in an MSA) and either had more than $10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

[15] 2005 median family income is $58,000 for the United States and $62,500 for California. Based on 2000 census data on family incomes. Data are updated to 2005 using Census P-60 median family income data, Census American Community Survey data on changes in state median family incomes and local Bureau of Labor Statistics wage data.

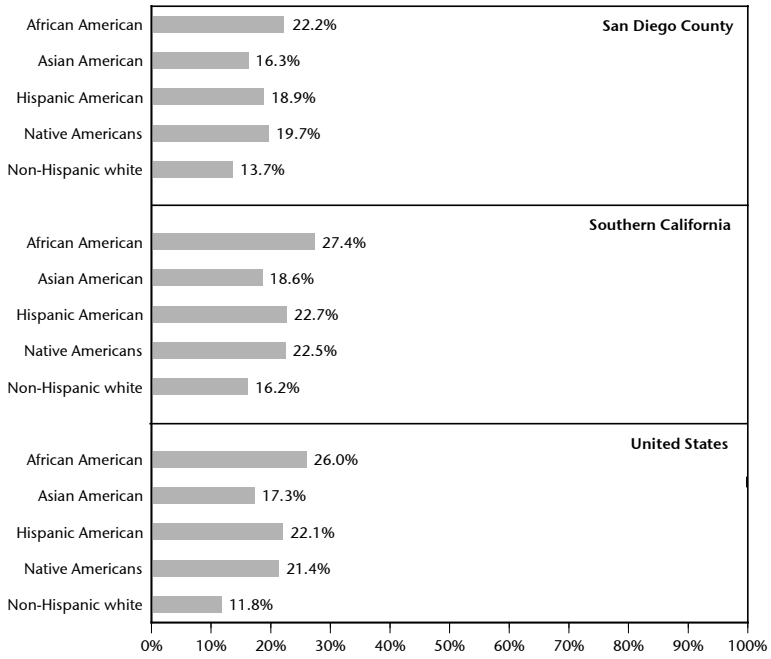
**Figure H-4.**
**Denial rates of conventional purchase loans to high-income households, 2005**

Note:

High-income borrowers are those households with 120% or more than the HUD area median family income (MFI).

Source:

FFIEC HMDA data 2005 and KnowledgePlex, an online resource maintained by the Fannie Mae Foundation.




A number of national studies have examined disparities in loan denial rates and loan amounts for minorities in the presence of other influences. Examples include the following:

- A study by the Federal Reserve Bank of Boston is one of the most cited studies of mortgage lending discrimination.[16] It was conducted using the most comprehensive set of credit characteristics ever assembled for a study on mortgage discrimination.[17] The study provided persuasive evidence that lenders in the Boston area discriminated against minorities in 1990.[18]

- Using the Federal Reserve Board's 1983 Survey of Consumer Finances and the 1980 Census of Population and Housing data, logit statistical analysis revealed that minority households were one-third as likely to receive conventional loans as non-Hispanic white households after taking into account financial and demographic controls.[19]

- Findings from a Midwest study indicate a significant relationship between race and both the number and size of mortgage loans. Data matched on socioeconomic characteristics revealed that African American borrowers across 13 census tracts received significantly less of both compared to their white counterparts.[20]

---

[16] Munnell, Alicia H., Geoffrey Tootell, Lynn Browne and James McEneaney. 1996. "Mortgage Lending in Boston: Interpreting HMDA Data." The American Economic Review. 86: 25-53.

[17] Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." The Journal of Economic Perspectives. 12:41-62.

[18] Yinger, John. 1995. Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination. New York: Russell Sage Foundation, 71.

[19] Canner, Glenn B., Stuart A. Gabriel and J. Michael Woolley. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets." Southern Economic Journal. 58:249-262.

[20] Leahy, Peter J. 1985. "Are Racial Factors Important for the Allocation of Mortgage Money?: A Quasi-Experimental Approach to an Aspect of Discrimination." American Journal of Economics and Sociology. 44:185-196.

However, other studies have found that differences in preferences for Federal Housing Administration (FHA) loans — mortgage loans that are insured by the government — versus conventional loans among racial and ethnic groups may partly explain disparities found in conventional loan approvals between minorities and non-minorities.[21] Several studies have found that, historically, minority borrowers are far more likely to receive FHA loans than comparable non-Hispanic white borrowers at all income and wealth levels. The insurance on FHA loans protects the lender, but the borrower can be hurt by higher costs. [22]

Studies on mortgage loan discrimination specific to Southern California or the state as a whole are more limited.

- HMDA data for California revealed disparities in prime and subprime lending for African American, Hispanic American and Native American applicants. Differences extended across all Metropolitan Statistical Areas.[23, 24]

- An older study using HMDA data and a stepwise regression model accounting for socioeconomic status revealed that measures of ethnicity contribute little explanation to mortgage lending in Sacramento.[25]

- A recent paired testing approach revealed adverse treatment of African Americans and Hispanics in Los Angeles in specific cases. However, the overall pattern of treatment observed offered little evidence of systemic variation in the treatment of African American and Hispanic American testers relative to non-minority testers in Los Angeles. Although this study did find increased encouragement for minorities to pursue FHA loans.[26]

**Higher fees and interest rates.** Denial of loans is only one way minorities might be discriminated against in the home mortgage market; mortgage-lending discrimination can also occur through high fees and interest rates. The housing market provides a unique environment for this type of discrimination through fees associated with various loan types.

Until recently, one of the fastest growing segments of the home mortgage industry was subprime lending. From 1994 through 2003, subprime mortgage activity grew by 25 percent per year and accounted for $330 billion of U.S. mortgages in 2003, up from $35 billion a decade earlier.

---

[21] Canner. 1991. "Race, Default Risk and Mortgage Lending: A Study of the FHA and Conventional Loan Markets."

[22] Yinger. 1995. Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination. 80.

[23] Gee, Peter. 2004. The Price of Credit: Prime and Subprime Lending in California 2004. The Greenlining Institute.

[24] See definition of subprime loans discussed on the following page.

[25] Dingemans, Dennis. 1979. "Redlining and Mortgage Lending in Sacramento." *Annals of the Association of American Geographers.* 69:225-239.

[26] Ross, Stephen, Margery Austin Turner, Erin Godfrey and Robin R. Smith. 2005. "Mortgage Lending in Chicago and Los Angeles: A Paired Testing Study of the Pre-Application Process." *University of Connecticut Department of Economics*. Working Paper Series.

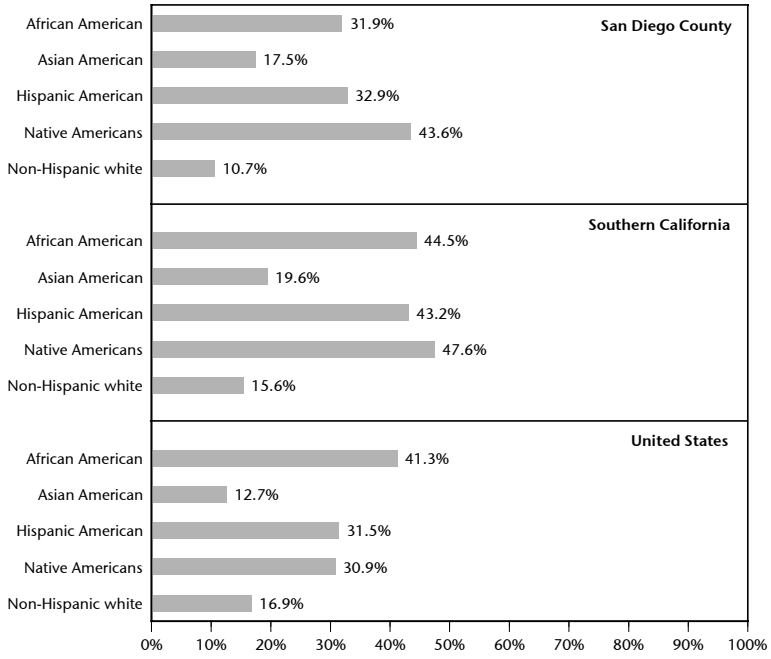
Subprime loans have higher interest rates than prime loans. These loans are marketed and sold to customers with blemished or limited credit histories who would typically not qualify for prime loans. Over time these loans also became available to homeowners who did not want to make a down payment, disclose or provide proof of income and wealth or wanted to purchase a "high-priced" home and would not be able to qualify under a different instrument.[27] Because of higher interest rates and additional costs, subprime loans impacted homeowners' ability to grow home equity and increased their risks of foreclosure — consequences that have become especially apparent since 2007 and are discussed in greater detail below.

Figure H-5 presents data on the percent of conventional refinancing loans that were from subprime lenders in 2004 in San Diego County, Southern California and the United States. In San Diego County, African American, Asian American, Native American and Hispanic American borrowers are much more likely to have a subprime loan than non-Hispanic whites. For example, in San Diego, about 32 percent of conventional refinancing loans obtained by African Americans in 2004 were from subprime lenders compared with only about 11 percent of refinancing loans obtained by non-Hispanic whites. Similar trends are also seen in both Southern California and the nation.

**Figure H-5.**
**Percent of conventional refinancing loans from subprime lenders, 2004**

Source:

FFIEC HMDA data 2004 and KnowledgePlex, an online resource maintained by the Fannie Mae Foundation.




[27] Gerardi, Shapiro, and P. Willen. 2008. "Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure. *Federal Reserve Bank of Boston*.

There is evidence of lenders seeking out and offering these loans to individuals who often will not be able to pay off the loan,[28] a form of "predatory lending." Furthermore, some research has found that many recipients of subprime loans — including homeowners in California — could have qualified for prime loans.[29]

Research has found evidence that predatory lenders have disproportionately targeted minorities. A 2001 HUD study using 1998 HMDA data found that subprime loans were disproportionately concentrated in black neighborhoods compared to white neighborhoods even after controlling for income.[30] For example, borrowers in upper-income black neighborhoods were six times more likely to refinance with a subprime loan than borrowers in upper-income white neighborhoods.

Historically, differences in types of loans awarded to minorities have also been attributed to steering by real estate agents, who serve as an information filter between buyers and sellers.[31] Some studies claim that real estate brokers provide different levels of assistance and different information on loans to minorities and non-minorities.[32] This "steering" can shape the perceived availability of loans to minority borrowers.

**Lessons from the current mortgage lending crisis.** Beginning in early 2007, the U.S. economy weakened, home values declined and mortgage rates rose. The turmoil in the housing market has been far-reaching including the loss of home equity, decreased demand for housing and increased rates of foreclosure.[33] Much of the blame has been placed on risky practices in the mortgage industry including the substantial increase in subprime lending.

As discussed above, subprime mortgages increased at an extraordinary rate between the mid-1990s and mid-2000s. These high-cost loans increased from 8 percent of originations in 2003 to 20 percent in both 2005 and 2006.[34] Households holding subprime loans have a higher likelihood of delinquency or foreclosure. A study released from the Federal Reserve Bank of Boston found "homeownerships that begin with a subprime purchase mortgage end up in foreclosure almost 20 percent of the time, or more than 6 times as often as experiences that begin with prime purchase mortgages." [35]

---

[28] Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001. HUD-Treasury National Predatory Lending Task Force Report. *HUD*; Carr, J. and L. Kolluri. 2001. Predatory Lending: An Overview. *Fannie Mae Foundation*; and California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, 2008. "Paying More for the American Dream."

[29] Freddie Mac. 1996, September. "Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families." *Freddie Mac.* (accessed February 5, 2007); and Lanzerotti. 2006. "Homeownership at High Cost: Foreclosure Risk and High Cost Loans in California." *Federal Reserve Bank of San Francisco*.

[30] Department of Housing and Urban Development (HUD) and the Department of Treasury. 2001.

[31] Kantor, Amy C. and John D. Nystuen. 1982. "De Facto Redlining a Geographic View." *Economic Geography.* 4:309-328.

[32] Yinger. 1995. Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination. 78–79.

[33] Joint Center for Housing Studies of Harvard University. 2008. "The State of the Nation's Housing."

[34] Joint Center for Housing Studies of Harvard University. 2008. "The State of the Nation's Housing."

[35] Gerardi, Shapiro, and P. Willen. 2008. "Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosure. *Federal Reserve Bank of Boston*.

In California, homeowners with 60 or more delinquencies rose from about 52,500 in the first quarter of 2007 to about 171,000 in the first quarter of 2008.[36] Furthermore, many homeowners, especially those with subprime loans, lost equity in their homes. As of September 2008, the proportion of residential properties in California with negative equity (a mortgage worth more than the value of the home) was 27 percent, one of the highest rates in the county.[37] In the last quarter of 2008, California led the country with a monthly average of 43,000 borrowers going into negative equity. In total, California lost over $1.2 trillion in residential property values in 2008 which accounts for more than half of the national decline in housing values from 2007 to 2008.[38] Due to the higher rate of subprime mortgages among minority homeowners, these homeowners have reportedly been disproportionately affected in terms of foreclosures and loss of home equity.[39]

These problems facing the housing industry substantially impact the ability to secure capital through home mortgages to start or expand a small business. This issue has been highlighted in statements made by members of the Board of Governors of the Federal Reserve System to the U.S. Senate and U.S. House of Representatives:

- On April 16, 2008, Frederic Mishkin informed the U.S. Senate Committee on Small Business and Entrepreneurship that "one of the most important concerns about the future prospects for small business access to credit is that many small businesses use real estate assets to secure their loans. Looking forward, continuing declines in the value of their real estate assets clearly have the potential to substantially affect the ability of those small businesses to borrow. Indeed, anecdotal stories to this effect have already appeared in the press." [40]
- On November 20, 2008, Randall Kroszner told the U.S. House of Representatives Committee on Small Business that "small business and household finances are, in practice, very closely intertwined. [T]he most recent Survey of Small Business Finances (SSBF) indicated that about 15 percent of the total value of small business loans in 2003 was collateralized by 'personal' real estate. Because the condition of household balance sheets can be relevant to the ability of some small businesses to obtain credit, the fact that declining house prices have weakened household balance-sheet positions suggests that the housing market crisis has likely had an adverse impact on the volume and price of credit that small businesses are able to raise over and above the effects of the broader credit market turmoil." [41]

While, as yet, there is limited academic research related to these issues, many news outlets have reported on the lack of credit available to small businesses.[42]

---

[36] Olson, John. 2008. Understanding the Foreclosure Crisis in California. *Federal Reserve Bank of San Francisco*.

[37] First American CoreLogic. 2008. First American CoreLogic's Negative Equity Data Report.

[38] First American CoreLogic. 2008. First American CoreLogic and LoanPerformance Home Price Index Analytics.

[39] California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Ohio Fair Lending Coalition and Woodstock Institute, 2008. "Paying More for the American Dream."

[40] Mishkin, Frederic. 2008. "Statement of Frederic S. Mishkin, Member, Board of Governors of the Federal Reserve System before the Committee on Small Business and Entrepreneurship, U.S. Senate on April 16."

[41] Kroszner, Randall. 2008. "Effects of the financial crisis on small business." *Testimony before the Committee on Small Business, U.S. House of Representative on November 20*.

[42] Mount, Ian. 2007. "The credit crunch and small business." *CNNMoney*. August 30; Bernard, Tara. 2008. "A Rush Into Refinancing as Mortgage Rates Fall." *The New York Times.* December 4; Timiraos, N. and R. Simon. 2008. "Self-Employed

Current opportunities to obtain business capital through home mortgages appear to be limited especially for homeowners with little home equity. Furthermore, the increasing rates of default and foreclosure, especially for homeowners with subprime loans, reflect shrinking capital that was initially available through these loans. These consequences are likely to have a disproportionate impact on minorities in terms of both homeownership and the ability to secure capital for business start-up and growth.

**Redlining.** Redlining refers to mortgage lending discrimination against geographic areas associated with high lender risk. These areas are often racially determined, such as African American or mixed race neighborhoods.[43] This practice can perpetuate problems in already poor neighborhoods.[44]

For example, the City of East Palo Alto sued a California lender for redlining and having loan practices that discriminated against people in low income or minority communities. Evidence included loan officers telling applicants that the bank simply did not lend in East Palo Alto or in specific minority neighborhoods.[45] The bank provided cash and a revolving loan fund in order to settle the lawsuit.

Most quantitative studies have failed to find strong evidence in support of geographic dimensions of lender decisions. Studies in Columbus, Ohio; Boston, Massachusetts; and Houston, Texas found that racial differences in loan denial had little to do with the racial composition of a neighborhood, but rather the individual characteristics of the borrower.[46] Some studies found the race of an applicant to be a factor in loan denials, but not the racial makeup of the neighborhood.

Studies of redlining have primarily focused on the geographic aspect of lender decisions; however, redlining can also include the practice of restricting credit flows to minority neighborhoods through procedures that are not observable in actual loan decisions. Examples include branch placement, advertising and other pre-application procedures.[47] These practices can deter minorities from starting businesses. Locations of financial institutions are important to small business start up because local banking sectors often finance local business.[48] Redlining practices would deny this capital resource to minorities.

---

Are Frozen Out of Mortgages." *The Wall Street Journal*. December 2; and Zwahlen, Cyndia. 2008. "Restoring the flow of credit to entrepreneurs." *Los Angeles Times*. December 1.

[43] Holloway, Steven R. 1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio." *Annals of the Association of American Geographers.* 88:252-276.

[44] Ladd, Helen F. 1998. "Evidence on Discrimination in Mortgage Lending." *The Journal of Economic Perspectives.* 12:41-62.

[45] "California bank pays $206,000 and establishes $7 million credit line for city to settle redlining suit." *National Fair Housing Advocate Online.* http://www.fairhousing.com/index.cfm?method=page.display&pagename=advocate_october02_page5 (accessed February 8,2007).

[46] See Holloway. 1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio."; Tootell. 1996. "Redlining in Boston: Do Mortgage Lenders Discriminate Against Neighborhoods?"; and Holmes, Andrew and Paul Horvitz. 1994. "Mortgage Redlining: Race, Risk, and Demand." *The Journal of Finance.* 49:81-99.

[47] Yinger, John. 1995. "Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination." Russell Sage Foundation. New York. 78-79.

[48] Holloway. 1998. "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio."

**Steering by real estate agents.** A number of researchers have found that discrimination by real estate agents contributes to residential segregation of minorities. One such practice is "steering" of prospective homebuyers toward particular neighborhoods and away from others because of their race or ethnicity (a practice that has been prohibited by law for many decades). A recent study found such practices in Los Angeles and other cities throughout the country. [49]

**Gender discrimination in mortgage lending.** Relatively little information is available on sex-based discrimination in mortgage lending markets. Historically, lending practices overtly discriminated against women by requiring information on marital and childbearing status. Risk associated with women of childbearing age and unmarried women resulted in "income discounting," limiting the availability of loans to women.[50]

The Equal Credit Opportunity Act (ECOA) in 1973 suspended these discriminatory lending practices. A study in California that used regression analysis explored discrimination against married and single women in 16 metropolitan areas from 1977 to 1978 revealed little evidence of sex discrimination in the state. Certain barriers have continued after 1973, however. For example, there is some evidence that lenders under-appraised property for female borrowers.[51]

## Access to Business Capital

Barriers to capital markets can have significant impacts on small business formation and expansion. For example, during Caltrans public hearings held in spring 2006, "discrimination in obtaining loans due to race and gender," was identified as an issue for businesses.[52] In addition, several studies have found evidence that start-up capital is important for business profits, longevity and other outcomes.[53]

- The amount of start-up capital is positively associated with small business sales and other outcomes;[54]
- Limited access to capital has limited the size of African American-owned businesses;[55] and
- Weak financial capital was identified as a significant reason that more African American-owned firms than non-Hispanic white-owned firms closed over a four-year period.[56]

---

[49] Galster, George and Erin Godfrey. 2005. "Racial Steering by Real Estate Agents in the U.S. in 2000." *Journal of the American Planning Association.* 71:251-268.

[50] Card. 1980. "Women, Housing Access, and Mortgage Credit."

[51] Ladd, Helen F. 1982. "Equal Credit Opportunity: Women and Mortgage Credit." *The American Economic Review*. 72:166-170.

[52] Caltrans Public Hearing Testimony and Related Documents. Examined and summarized by GCAP Services.

[53] For examples see Fairlie. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited;" and Grown, Caren and Timothy Bates. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies." Center for Economic Studies, U.S. Bureau of the Census.

[54] See Fairlie, Robert W. and Harry A. Krashinsky. 2006. "Liquidity Constraints, Household Wealth, and Entrepreneurship Revisited"; and Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

[55] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

[56] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

Bank loans are one of the largest sources of debt capital for small businesses.[57] Discrimination in the application and approval processes of these loans and other credit resources could be detrimental to the success of minority- and women-owned businesses. Previous studies have addressed race/ethnicity and gender discrimination in capital markets by evaluating:

- Loan denial rates;
- Loan values;
- Interest rates;
- Individual assumptions that loan applications will be rejected;
- Sources of capital; and
- The relationship between start-up capital and business survival.

To examine the role of race/ethnicity and gender in capital markets, the study team analyzed data from the Federal Reserve Board's 1998 and 2003 Survey of Small Business Finances (SSBF) conducted by the Board of Governors, which is the most comprehensive national source of credit characteristics of firms with fewer than 500 employees. Sample weights are applied to provide representative estimates. The survey contains information on loan denial and interest rates, as well as anecdotal information from firms. The samples from 1998 and 2003 contain records for 3,521 and 4,240 firms, respectively.

The SSBF records the geographic location of the firm by Census Division, not city, county or state. The Pacific Census Division (referred to below as the Pacific region) contains California.[58]

**Loan denial rates.** Figure H-6 shows loan denial rates from the 1998 and 2003 SSBFs for the Pacific region and the United States. In 1998, about 33 percent of minority- and women-owned firms in the Pacific region reported being denied a loan, compared to 21 percent of non-Hispanic white male-owned businesses. However, in 2003, loan denial rates for minority- and female-owned firms were lower than those for non-Hispanic white male-owned firms in the Pacific Region.

Loan denial statistics on individual minority groups in the Pacific region are not reported in Figure H-6 due to limited sample sizes. Data for the U.S. for 1998 reveal the following:

- African American-owned businesses experienced higher rates of denial than all other groups;
- Hispanic American-owned firms had a loan denial rate considerably above those of non-Hispanic white male-owned firms; and
- Asian American- and white women-owned firms had higher rates of loan denial compared to non-Hispanic white male-owned firms, although the difference is not statistically significant.

In 2003, loan denial rates were substantially higher for African American-owned firms than other firms.

[57] Data from the 1998 SSBF indicates that 70 percent of loans to small business are from commercial banks. This result is present across all gender, race and ethnic groups with the exception of African Americans, whose rate of lending from commercial banks is even greater than other minorities. See Blanchard, Lloyd, Bo Zhao and John Yinger. 2005. "Do Credit Market Barriers Exist for Minority and Woman Entrepreneurs." *Center for Policy Research, Syracuse University.*

[58] The Pacific Census Division includes Alaska, California, Hawaii, Oregon and Washington.

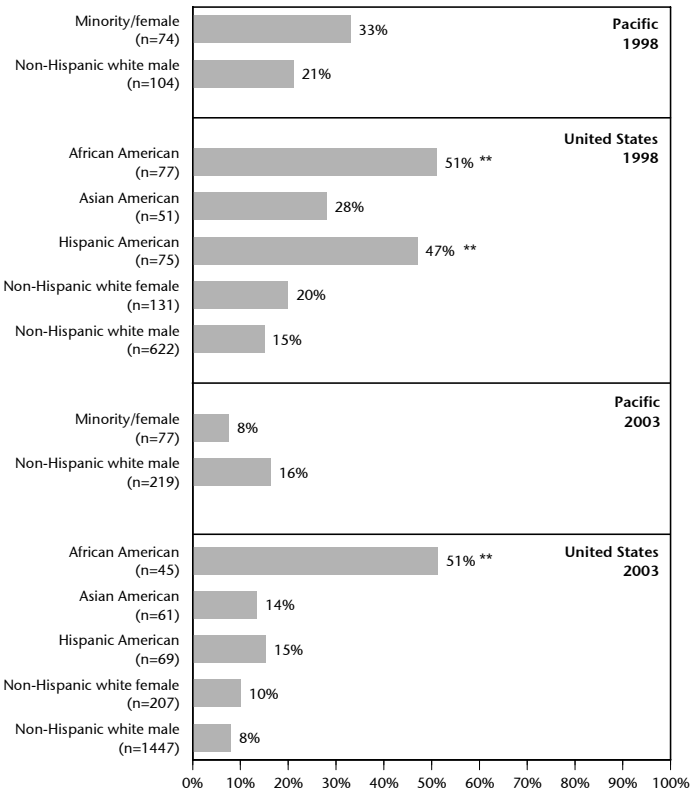
**Figure H-6.**
**Business loan denial rates, 1998 and 2003**

Note:

** Denotes that the difference in proportions from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.




**Regression analyses of loan denial rates.** A number of studies have investigated whether disparities in loan denial rates for different race/ethnicity and gender groups exist after controlling for other factors that affect loan approvals. Findings from these studies include:

- Commercial banks are less likely to loan to African American-owned firms than to non-Hispanic white-owned firms after controlling for other factors.[59]

- African American, Hispanic American and Asian American men are more likely to be denied a loan than non-Hispanic white men. However, African American borrowers are more likely to apply for a loan.[60]

- Disparities in loan denial rates between African American-owned and non-Hispanic white-owned firms tend to decrease with increasing competitiveness of lender markets. A similar phenomenon is observed when considering differences in loan denial rates between male- and female-owned firms. [61]

- The probability of loan denial decreases with greater personal wealth. However, controlling for personal wealth does not resolve the large differences in denial rates across African American-, Hispanic American-, Asian American-, and non-Hispanic

[59] Cavalluzzo, Ken, Linda Cavalluzzo and John Wolken. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey." *Journal of Business.* 75: 641-679.

[60] Coleman, Susan. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances." *The Journal of Business and Entrepreneurship.* 151-166.

[61] Cavalluzzo, 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

white-owned firms. Specifically, information on personal wealth explained some differences for Hispanic- and Asian American-owned firms compared to non-Hispanic whites, but almost none for African American-owned firms.[62]

- Loan denial rates are significantly higher for African American-owned firms than non-Hispanic white-owned firms in the presence of several other factors such as creditworthiness and other characteristics. This result is largely insensitive to specification of the model. Consistent evidence on loan denial rates and other indicators of discrimination in credit markets was not found for other minorities and women.[63]

- Women-owned businesses are no less likely to apply for or to be approved for loans in comparison to firms owned by men.[64]

**BBC regression model for the 1998 SSBF.** The study team conducted its own analysis of the 1998 SSBF by developing a model to explore the relationships between loan denial and race/ethnicity and gender of firm ownership while controlling for other factors. As discussed above, there is extensive literature on business loan denials that provides the theoretical basis for the regression models. Other studies typically use probit econometric models to investigate the effects of various owner, firm and loan characteristics, including the race and gender of the ownership, on the likelihood of being denied a loan. The standard model includes three general categories of variables including:

- The owner's demographic characteristics (including race and gender), credit and resources;

- The firm's characteristics, credit and financial health; and

- The environment in which the firm and lender operate and characteristics of the loan.[65]

After excluding a small number of observations where the loan outcome was imputed, the national sample included 932 firms that had applied for a loan during the three years preceding the survey. The Pacific region included 172 such firms.

---

[62] Cavalluzzo, Ken and John Wolken. 2002. "Small Business Turndowns, Personal Wealth and Discrimination." *FEDS Working Paper No. 2002-35.*

[63] Blanchflower, David G., Phillip B. Levine and David J. Zimmerman. 2003. "Discrimination in the Small Business Credit Market." *The Review of Economics and Statistics.* 85:930-943.

[64] Coleman. 2002. "Characteristics and Borrowing Behavior of Small, Women-owned Firms: Evidence from the 1998 National Survey of Small Business Finances."

[65] See, for example, Blanchard, Lloyd; Zao, Bo and John Yinger. 2005. "Do Credit Barriers Exist for Minority and Women Entrepreneurs*?" Center for Policy Research, Syracuse University*.

A large number of variables are used to control for differences in the neutral factors described above. A total of 58 variables are included to represent the owner's credit and resources (10 variables); the firm's characteristics, credit and financial health (29 variables); and the environment in which the firm and lender operate including the nature of the loan applied for (19 variables). Given the relatively small sample size and the large number of variables, the study team did not develop a model based on firms located in the Pacific region. Instead, all U.S. firms are included in the model and any Pacific region effects are estimated by including regional control variables — an approach commonly used in other studies that analyze these data.[66] The regional variables include an indicator variable for firms located in the Pacific region and interaction variables that represent firms owned by minorities or women and are located in the Pacific region.

Figure H-7 presents the coefficients and t-statistics from the probit model of loan denials.

The results from the model indicate that a number of neutral factors affect the probability of loan denial with statistical significance:

- Business owners who have been personally bankrupt or have had a judgment against them are more likely to be denied a loan. Alternatively, business owners with at least a four-year college degree are less likely to be denied.

- Businesses with existing lines of credit and/or existing collateralized loans (such as business mortgages, vehicle loans and equipment loan) are less likely to be denied a loan, however, firms with outstanding loans from stockholders are more likely to be denied. Firm delinquency in business transactions increases the probability of a firm being denied a loan. Family-owned firms are more likely to be denied, while firms that are purchased are less likely to be denied.

- Firms in the construction industry are more likely to have their loan applications denied than other firms. Firms in highly concentrated industry segments (as measured by the Herfindahl Index) are more likely to be denied.

- Business mortgage, vehicle loan and equipment loan applications are less likely to be denied than other types of business loan.

Even after controlling for potentially neutral influences, firms owned by African Americans and Hispanic Americans remain more likely to have their loans denied than other firms (both statistically significant differences). The indicator variable for the Pacific region and the interaction terms for Pacific region and minority- and women-ownership are not statistically significant. This result implies that the probabilities of loan denials for minority- and women-owned firms within the Pacific region are not statistically different from the U.S. as a whole.

[66] Blanchflower, David G.; Levine, Phillip B. and David J. Zimmerman. 2003. "Discrimination in the Small-Business Credit Market." *The Review of Economics and Statistics*. 85(4): 930-943; National Economic Research Associates, Inc., 2008. "Race, Sex, and Business Enterprise: Evidence from the City of Austin." *Prepared for the City of Austin, Texas*; and CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. *Prepared for Santa Clara Valley Transportation Authority.*

**Figure H-7.**
**Likelihood of business loan denial (probit regression) in the U.S. in the 1998 SSBF,**
**Dependent variable: loan denial**

| Variable | Coefficient | t-statistic |
|---|---|---|
| **Race/ethnicity and gender** | | |
| Constant | -5.901834 | -4.59 ** |
| African American | 1.147015 | 4.41 ** |
| Asian American | 0.342745 | 0.80 |
| Hispanic American | 1.086194 | 4.68 ** |
| Female | -0.047219 | -0.24 |
| Pacific region | 0.157391 | 0.63 |
| African American in Pacific region | -0.665632 | -1.10 |
| Asian American in Pacific region | 0.016462 | 0.03 |
| Hispanic American in Pacific region | 0.119294 | 0.25 |
| Female in Pacific region | 0.218200 | 0.56 |
| **Owner's characteristics, credit and resources** | | |
| Age | 0.007337 | 0.92 |
| Owner experience | 0.010275 | 0.93 |
| Less than high school education | 0.090054 | 0.25 |
| Some college | -0.147203 | -0.71 |
| Four-year degree | -0.554377 | -2.52 ** |
| Advanced degree | -0.436286 | -1.75 * |
| Bankruptcy in past 7 years | 1.496524 | 2.66 ** |
| Judgement against in past 3 years | 1.057841 | 3.27 ** |
| Log of net worth excluding home | -0.027334 | -0.48 |
| Owner has negative net worth | -0.451254 | -0.64 |

| Variable | Coefficient | t-statistic |
|---|---|---|
| **Firm's characteristics, credit and financial health** | | |
| D&B credit score = moderate risk | 0.751698 | 1.50 |
| D&B credit score = average risk | 0.776498 | 1.55 |
| D&B credit score = significant risk | 0.511792 | 1.00 |
| D&B credit score = high risk | 0.469423 | 0.85 |
| Total employees | -0.001487 | -0.48 |
| Percent of business owned by principal | -0.003396 | -0.74 |
| Family-owned business | 0.806781 | 2.63 ** |
| Firm purchased | -0.296028 | -1.47 * |
| Firm inherited | -0.045901 | -0.13 |
| Firm age | -0.013492 | -1.23 |
| Firm has checking account | 0.291959 | 0.88 |
| Firm has savings account | -0.268816 | -1.53 |
| Firm has line of credit | -0.935108 | -4.95 ** |
| Existing capital leases | -0.089363 | -0.46 |
| Existing mortgage for business | -0.334783 | -1.57 * |
| Existing vehicle loans | -0.540121 | -2.91 ** |
| Existing equipment loans | -0.600107 | -2.82 ** |
| Existing loans from stockholders | 0.587765 | 2.89 ** |
| Other existing loans | -0.108275 | -0.54 |
| Firm used trade credit in past year | -0.230761 | -1.41 |
| Log of total sales in prior year | -0.013200 | -0.20 |
| Negative sales in prior year | 0.190337 | 0.23 |
| Log of cost of doing business in prior year | 0.019601 | 0.37 |
| Log of total assets | 0.029251 | 0.41 |
| Negative total assets | -0.193784 | -0.22 |
| Log of total equity | 0.095306 | 1.27 |
| Negative total equity | 0.959581 | 1.24 |
| Firm bankruptcy in past 7 years | 0.744926 | 1.39 |
| Firm delinquency in business transactions | 1.218895 | 6.65 ** |

| Variable | Coefficient | t-statistic |
|---|---|---|
| **Firm and lender environment and loan characteristics** | | |
| Partnership | 0.065837 | 0.19 |
| S corporation | -0.275278 | -1.17 |
| C corporation | -0.298310 | -1.07 |
| Construction industry | 0.552832 | 2.01 ** |
| Manufacturing industry | 0.293527 | 1.11 |
| Transportation, communications and utilities industry | 0.418079 | 0.93 |
| Finance, insurance and real estate industries | -0.047970 | -0.13 |
| Engineering industry | 0.656266 | 1.82 * |
| Other industry | 0.310062 | 1.58 |
| Herfindahl index = .10 to .18 | 2.366303 | 4.52 ** |
| Herfindahl index = .18 or above | 2.667912 | 5.05 ** |
| Located in MSA | 0.190705 | 1.04 |
| Sales market local only | 0.191879 | 1.20 |
| Loan amount | 0.000000 | 0.00 |
| Capital lease application | -0.171244 | -0.49 |
| Business mortgage application | -0.846545 | -2.97 ** |
| Vehicle loan application | -1.112551 | -3.72 ** |
| Equipment loan application | -0.768501 | -2.68 ** |
| Loan for other purposes | -0.304385 | -1.51 |

Note: * Statistically significant at 90% confidence level.
** Statistically significant at 95% confidence level.

Source: BBC Research & Consulting analysis of 1998 SSBF data.

The study team simulated loan approval rates for those minority groups with statistically significant disparities (African Americans and Hispanic Americans) by comparing observed approval rates with simulated rates. The study team simulated the rates by inputting observed variables for those minorities into a probit model developed for non-Hispanic white male-owned firms that includes the affects of a business being in the Pacific region.[67] Figure H-8 shows these simulated loan approval rates in comparison to the actual approval rates observed in the 1998 SSBF.

**Figure H-8.**
**Comparison of actual loan approval rates to simulated loan approval rates under non-Hispanic white male business environment for groups experiencing significant disparities, 1998**

| Group | Loan approval rates | | Disparity index (100 = parity) |
|---|---|---|---|
| | Actual | Benchmark | |
| African Americans | 50.1% | 78.3% | 64 |
| Hispanic Americans | 51.6% | 83.9% | 62 |

Source: BBC Research & Consulting analysis of 1998 NSSBF data.

Based on 1998 SSBF data, the loan approval rate was 50 percent for African American-owned firms that applied for loans. Model results show that African American-owned firms would have an approval rate of about 78 percent if they were approved at the same rate as similarly situated firms owned by non-Hispanic white males. Hispanic American-owned firms would be approved for loans about 84 percent of the time. The actual loan approval rate for Hispanic American-owned firms was 52 percent.

**Other researchers' analyses of the 2003 SSBF.** Summary statistics from the 2003 SSBF of loan denial rates by race and ethnicity are presented at the beginning of this section. While these data are the most recent information collected from small businesses, the study team selected the data from the 1998 SSBF to conduct the econometric analysis to capitalize on the over-sampling of minority-owned business in the 1998 SSBF (not done in the 2003 SSBF).[68]

Other recent studies elected to incorporate the 2003 SSBF into the analysis. In a study prepared for the City of Austin, Texas, NERA Economic Consulting (NERA) compared results from models using the 1993, 1998 and 2003 SSBFs, while focusing the analysis on the 1993 data. The study recognizes the drawbacks of the 2003 SSBF. NERA investigated factors influencing loan denial rates using a probit econometric model. At a national level, their results using the 1998 SSBF are consistent with BBC's findings. However, when using the 2003 SSBF, they find that loan denial rates for Hispanic-owned firms are not significantly different from non-Hispanic whites.[69]

[67] The approval rate is equal to one minus the denial rate.

[68] In the 1998 data, 7.3 percent of the firms surveyed were owned by Hispanic Americans, however in 2003 that number dropped to 4.0 percent. Numbers dropped from 7.7 percent to 2.8 percent and 5.7 percent to 4.2 percent for African American-owned and Asian American-owned firms, respectively. This decrease in minority samples impacts the precision of econometric analysis used to investigate disparities in loan denial rates for minority groups.

[69] National Economic Research Associates, Inc., 2008. "Race, Sex, and Business Enterprise: Evidence from the City of Austin." *Prepared for the City of Austin, Texas.*

CRA International (CRA) also incorporated the 2003 SSBF in a study prepared for the Santa Clara Valley Transportation Authority. Their approach was to "combine the 1998 and 2003 SSBFs to increase precision of estimates." Figure H-9 shows a summary of their findings of possible disparities in loan denial by race/ethnicity and gender using a probit econometric model and controlling for other factors.

**Figure H-9.**
**Likelihood of loan denial: Findings from 2007 CRA study using 1998 and 2003 SSBF data**

| | Statistical significance | Likelihood of loan denial |
|---|---|---|
| African American | Yes | Higher |
| Asian American | Yes | Higher |
| Hispanic American | Yes | Higher |
| Female | No | N/A |

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history, use of financial services and loan application characteristics.

While the study does not find differences in the likelihood of loan denial for female-owned business at a national level, the results indicate that female-owned firms have a lower likelihood of denial in the Pacific region.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization." Prepared for Santa Clara Valley Transportation Authority.

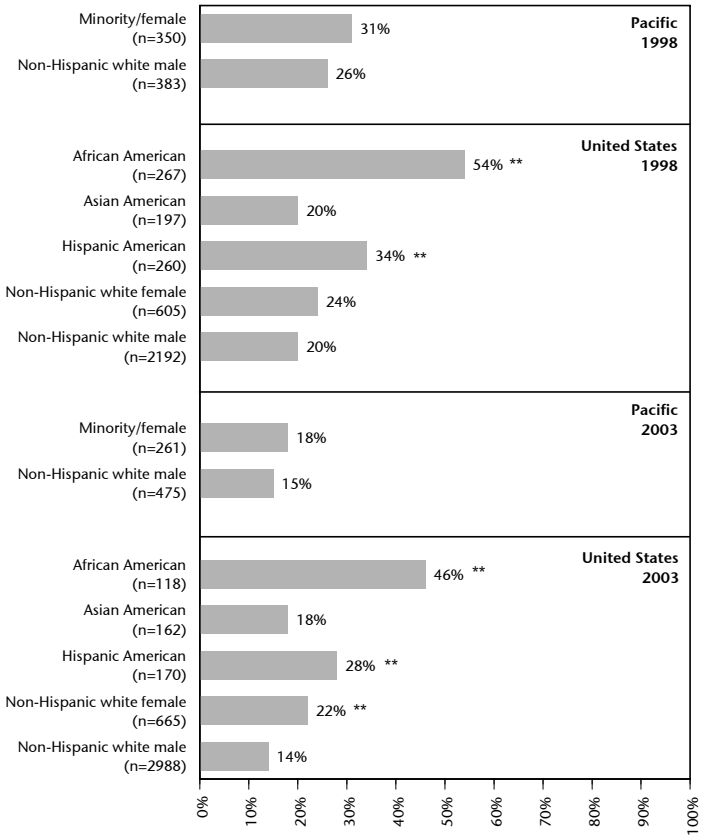
Consistent with BBC's findings, CRA's results indicate that African American- and Hispanic-owned firms have higher probabilities of loan denial. However, they also find that Asian-owned firms are more likely to be denied loans. CRA's results indicate that female-owned firms in the Pacific region are less likely to be denied loans.[70]

**Applying for loans.** Fear of loan denial is a barrier to capital markets because it prevents small businesses from applying for loans and thus can help explain differences in business outcomes. In addition, it provides insight into minority business owners' perceptions of the small business lending market. Figure H-10 shows results from the 1998 and 2003 SSBFs on firms that reported needing credit but did not apply because they feared denial. Minority- and women-owned firms were more likely to decline to apply for loans due to fear of denial than non-Hispanic white male-owned firms. In 1998, 31 percent of minority- and women-owned firms in the Pacific region indicated that they had not applied for loans due to fear of denial, compared to 26 percent of non-Hispanic white male-owned firms.

BBC was unable to report robust statistics on individual minority groups in the Pacific region from the 1998 or 2003 SSBFs due to limited sample sizes. However, results for African American- and Hispanic American-owned firms in the Pacific region appeared to be similar to national results that showed lower rates of loan applications for these groups due to fear of denial.

[70] CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization." *Prepared for Santa Clara Valley Transportation Authority.*

**Figure H-10.**
**Firms that needed loans but did not apply due to fear of denial, 1998 and 2003**




Note:

** Denotes that the difference in proportions from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.

CRA's study for the Santa Clara Valley Transportation Authority also included an econometric model to investigate firms that have not applied for loans due to fear of denial. The model explored whether differences between race/ethnicity and gender groups exist after controlling for other factors. As explained above, in their analysis they combined data from the 1998 and 2003 SSBFs. Figure H-11 presents a summary of their findings.

**Figure H-11.**
**Fear of loan denial: Findings from 2007 CRA study using 1998 and 2003 SSBF data**

| | Statistical significance | Likelihood of not applying for a loan due to fear of denial |
|---|---|---|
| African American | Yes | Higher |
| Asian American | No | N/A |
| Hispanic American | Yes | Higher |
| Female | No | N/A |

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, personal financial history, business financial history and use of financial services.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

CRA's results indicate that African American- and Hispanic American-owned businesses are more likely to not apply for a loan because of fear of denial. They do not find any differences in results for firms located in the Pacific region compared to the national results.[71]

Other research has identified multiple factors that influence the decision to apply for a loan, such as firm size, firm age, owner age and educational attainment. Controlling for these factors can help to determine whether race and ethnicity explain fear of loan denial. Findings indicate:

- African American- and Hispanic American-owners are significantly less likely to apply for loans.[72]

- After controlling for educational attainment, there were no significant differences in loan application rates between non-Hispanic white, African American, Hispanic American and Asian American men.[73]

- African American-owned firms are more likely than other firms to report being seriously concerned with credit markets and are less likely to apply for credit in fear of denial.[74]

**Loan values.** Beyond loan denial rates, the study team considered the loan values for firms receiving loans. Results from the 1998 and 2003 SSBFs for loan values awarded by ethnicity and race are given in Figure H-12. Comparing loan amounts for non-Hispanic white male-owned firms to minority- and women-owned firms indicates the following:

- In 1998, minority- and women-owned firms in the Pacific region received loan amounts that averaged less than one-half of the loan amounts awarded to non-Hispanic white male-owned firms. In 2003, minority- and women-owned firms in the Pacific region received loans that were greater on average than those made to non-Hispanic white male-owned firms. However, these differences were not statistically significant in either year.

- In 2003, national results show that minority- and women-owned firms received loans that were on average less than two-thirds the average loan amount received by non-Hispanic white male-owned firms, a greater disparity than in the 1998 national results.

[71] CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. *Prepared for Santa Clara Valley Transportation Authority.*

[72] Cavalluzzo, 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

[73] Coleman, Susan. 2004. "Access to Debt Capital for Small Women- and Minority-Owned Firms: Does Educational Attainment Have an Impact?" *Journal of Developmental Entrepreneurship*. 9:127-144.

[74] Blanchflower et al., 2003. Discrimination in the Small Business Credit Market.

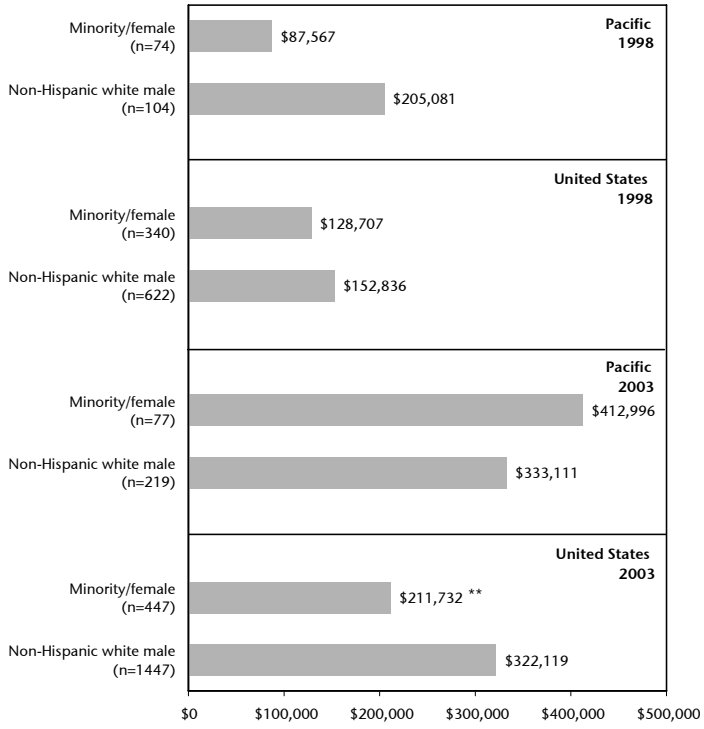
**Figure H-12.**
**Mean value of approved business loans, 1998 and 2003**

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.




Previous national studies have found that African American-owned firms received substantially lower loan amounts than their non-Hispanic white counterparts with similar characteristics. Examination of construction companies in the United States revealed that African American-owned firms received smaller loans than firms with otherwise identical traits.[75]

[75] Grown. 1991. "Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies."

**Interest rates.** Figure H-13 shows the average interest rate on commercial loans from the 1998 and 2003 SSBFs. In 1998, the mean interest rate for minority- and women-owned firms in the Pacific region was similar to the mean interest rate for non-Hispanic white male-owned firms. The same was true at the national level. However, in 2003, the interest rate on loans to minority- and women-owned firms was 1 percent more on average that that for non-Hispanic white male-owned firms.

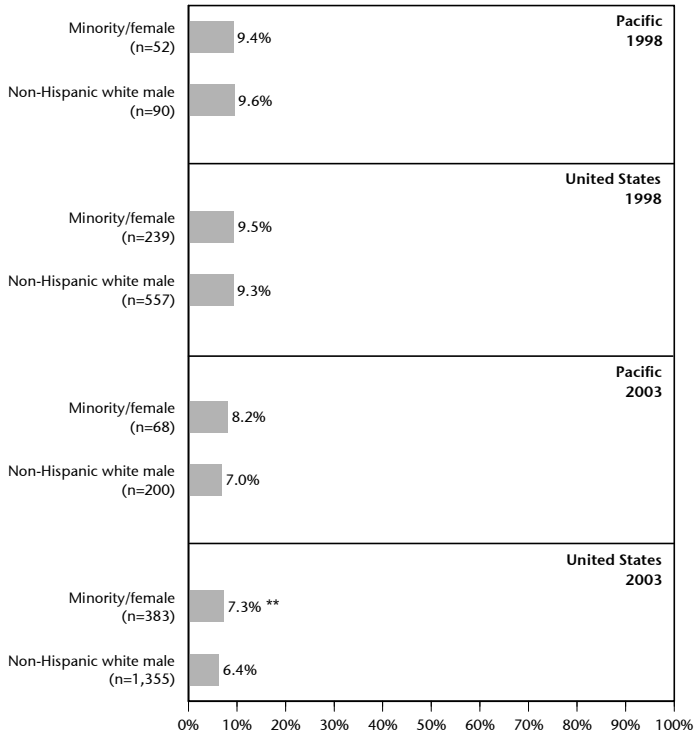
**Figure H-13.**
**Mean interest rate for business loans, 1998 and 2003**

Note:

** Denotes that the difference in means from non-Hispanic white male-owned firms is statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 1998 and 2003 Survey of Small Business Finances.




Other studies have investigated differences in interest rates across race/ethnicity and gender while controlling for factors such as individual credit history, firm credit history and Dun and Bradstreet credit scores. Findings from these studies include:

- Hispanic-owned firms had significantly higher interest rates for lines of credit in places with less credit market competition. However, no evidence was found that African American- or female-owned firms received different rates.[76]

- Among a sample of firms with no past credit problems, African American-owned firms paid significantly higher interest rates on approved loans.[77]

[76] Cavalluzzo. 2002. "Competition, Small Business Financing and Discrimination: Evidence from a New Survey."

[77] Blanchflower. 2003. "Discrimination in the Small Business Credit Market."

CRA's study also investigated differences in interest rates by race/ethnicity and gender using a linear econometric model and controlling for other factors that may impact interest rates. A summary of the results are shown in Figure H-14.

**Figure H-14.**
**Differences in interest rates: Findings from 2007 CRA study using 1998 and 2003 SSBF data**

| | Statistical significance | Comparison of interest rates |
|---|---|---|
| African American | Yes | Higher |
| Asian American | No | N/A |
| Hispanic American | Yes | Higher |
| Female | No | N/A |

Note:

N/A: not applicable.

The model specification included controls for owner characteristics, business characteristics, geographic characteristics, business performance, personal financial history, business financial history and use of financial services.

Source:

CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. Prepared for Santa Clara Valley Transportation Authority.

Results indicated that on a national level, African American- and Hispanic American-owned firms pay a higher interest rate than non-minority-owned firms even after controlling for other factors. CRA did not find any additional differences for firms located in the Pacific region.[78]

**Other factors affecting capital markets.** Ethnic banking sectors may also affect the availability of loans to different minority groups. For example, one study found strength in the ethnic banking sector influences credit accessibility in ethnic communities in Los Angeles. A strong Asian American bank sector helped Asian American communities transition to successful business environments, and a lack of strong banking sectors in African American communities could hinder development of African American businesses.[79]

## Bonding

Bonding is closely related to access to capital. Although little quantitative information exists regarding MBE/WBEs and access to surety bonds for public construction projects, there is anecdotal evidence that suggests such problems persist.[80] The in-depth interviews with Southern California businesses completed as part of this disparity study and other recent BBC studies, as well as public hearing testimony, identified bonding as a major barrier for smaller construction firms. (See Appendix B).

[78] CRA International. 2007. "Measuring Minority- and Woman-Owned Construction and Professional Service Firm Availability and Utilization. *Prepared for Santa Clara Valley Transportation Authority.*

[79] Dymski, Gary and Lisa Mohanty. 1999. "Credit and Banking Structure: Asian and African-American Experience in Los Angeles." *The American Economic Review.* 89:362-366.

[80] Enchautegui, Maria E. et al. 1997. "Do Minority-Owned Businesses Get a Fair Share of Government Contracts?" *The Urban Institute:* 1-117, p. 56.

## Summary of Analysis of Access to Capital for Business Formation and Success

There is evidence that minorities and women continue to face certain disadvantages in accessing capital necessary to start and expand businesses, based upon analysis of 2000 and 2007 U.S. Census Bureau data and results from the 1998 and 2003 SSBFs.

- Relatively fewer African Americans, Hispanic Americans and Native Americans in San Diego County and Southern California own homes than non-Hispanic whites, and those who do own homes tend to have lower home values. Home equity is an important source of capital for business start-up and growth.

- African Americans, Asian Americans, Hispanic Americans and Native Americans applying for home mortgages are more likely than non-minorities to have their applications denied.

- African American, Hispanic American and Native American mortgage borrowers are more likely to have subprime loans.

- Although business loan denial rates may have narrowed between minority- and non-minority-owned firms in the Pacific region, one recent study found that African American-, Asian American- and Hispanic American-owned businesses have higher denial rates when applying for business loans after controlling for other factors. When they receive loans, African American- and Hispanic-owned firms appear to pay higher interest rates, after controlling for other factors.

- Relatively more African American- and Hispanic American-owned firms that need credit do not apply for loans because they fear being denied the loan.

# APPENDIX I.
# Success of Businesses in the Construction and Engineering Industries

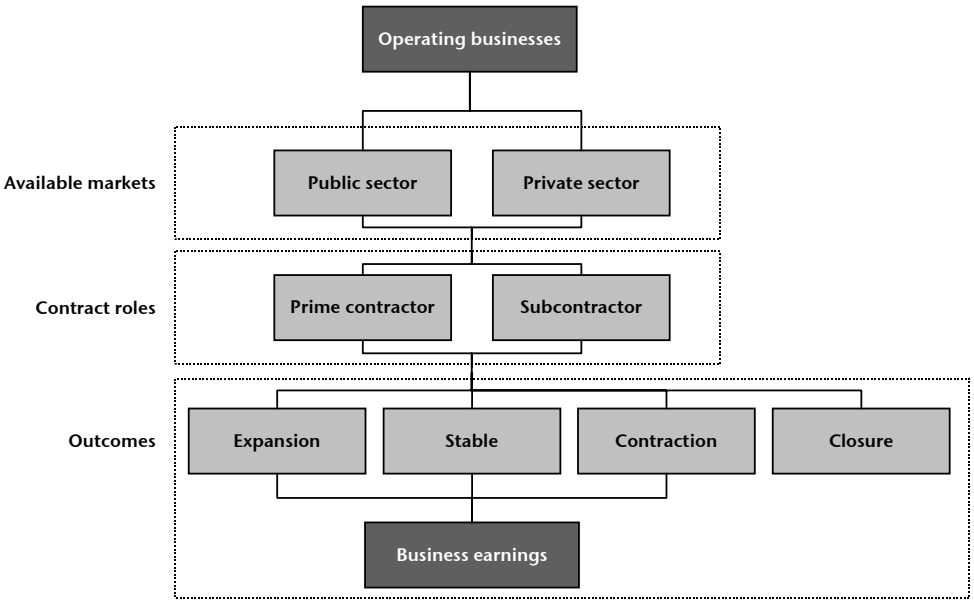
# APPENDIX I.
# Success of Businesses in the Construction and Engineering Industries

BBC also examined the relative success of MBE/WBEs once they are operating, assessing whether business outcomes for minority- and women-owned construction and engineering firms differ from those of majority-owned firms. BBC researched outcomes for MBE/WBEs and majority-owned businesses in terms of:

- Businesses discontinuing operations;
- Businesses expanding or contracting;
- Business receipts and earnings; and
- Size distribution of gross revenue.

This analysis examines whether some of the patterns of disparities in outcomes for minority- and women-owned businesses found by Congress in the U.S. are also found in Southern California. Figure I-1 provides a framework for the analysis. BBC begins this section by examining federal data sources on businesses in San Diego County, Southern California, California and the nation. The section concludes with an analysis of the differences in market opportunities and success for MBE/WBEs from BBC's Availability Survey.

**Figure I-1.**
**Business success**




Source: BBC Research & Consulting.

## Businesses Discontinuing Operations

The relative number of business failures among minority firms in California has been cited as an indicator of unfavorable business conditions that minority business owners face in the state. Although available data limit the following analysis to California as a whole, not Southern California, they are examined here because Southern California comprises 57 percent of the businesses in the state.[1]

**Rates of business closures in California.** In 2006, the Discrimination Research Center (DRC) released a report analyzing the effects of Proposition 209 on DBE survival and utilization. Voter passage of Proposition 209 was one of the factors that led to elimination of race- and gender-conscious project goals for state-funded contracts as well as local agencies' contracts that were not subject to the Federal DBE Program. The DRC report argues that Proposition 209 led to a sharp decrease in the utilization of DBE firms and in the DBE share of overall contract dollars, resulting in the closure of many of these firms.[2]

DRC's study tracked DBEs that were in business throughout California in 1996 to assess the net effect of Proposition 209.

- Of the 3,269 construction firms registered with Caltrans as DBEs in 1996, 1,005 remained in operation in 2006, a survival rate of 32 percent.

- The survival rate among African American-owned construction firms registered as DBE's in 1996 was the lowest of all groups at 27 percent.

However, the implications of these statistics are unclear. The report points out that it does not provide a comparable statistic for the number of non-DBE firms that have closed, so one cannot determine whether DBEs were more likely to close than other firms.

BBC further explored possible data sources that might indicate whether MBEs were more likely to close than other firms. Using data on firms first surveyed in the 1997 Survey of Minority- and Women-Owned Business Enterprises conducted by the U.S. Census Bureau, the U.S. Small Business Administration (SBA) reported on employer firm survival rates for minority-owned businesses between 1997 and 2001 across sectors of the economy ("employer firms" are firms with paid employees other than the business owner and family members).[3] The SBA report examined patterns in each state.

Figure I-2 on the following page shows that 34 percent of African American-owned firms in California in 1997 had closed by 2001, a rate higher than other groups. These findings are consistent with the DRC study of DBEs in California. Firms owned by Native Americans may have lower rates of closure than other firms in California. Rates for Hispanic American- and Asian American-owned firms in California are similar to the rate for all firms. The patterns for California are consistent with the United States as a whole for each group of firms except for those owned by Native Americans.

---

[1] BBC Research & Consulting from 2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.

[2] Discrimination Research Center. 2006. Free to Compete?: Measuring the Impact of Proposition 209 on Minority Business Enterprises. Berkeley: 20-21.

[3] Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington D.C.

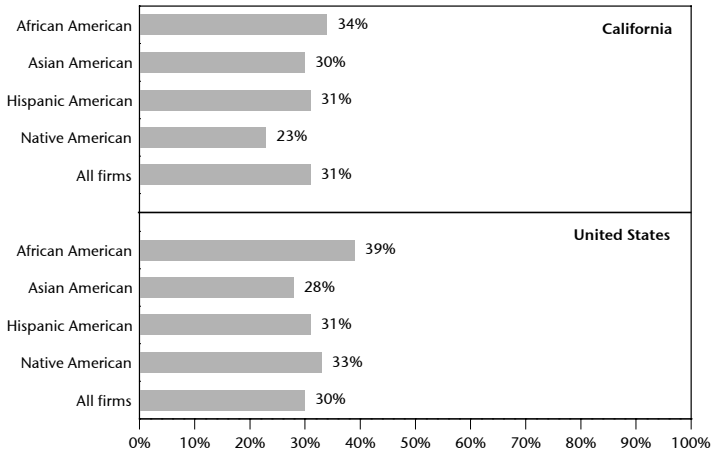
**Figure I-2.**
**Rates of firm closure 1997-2001, California and the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




**Rates of business closures for construction firms.** The data shown in Figure I-3 compare national rates of closure for construction firms to national rates of closure for all firms. The higher closure rate for African American-owned firms was also present when only examining construction firms. Closure rates also appeared to be higher for construction firms owned by Native Americans or Asian Americans. No statistics were available from this data source for engineering firms.

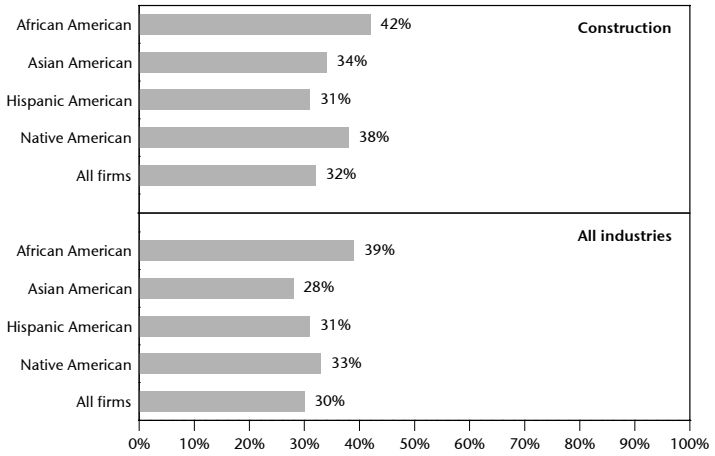
**Figure I-3.**
**Rates of firm closure 1997-2001, construction and all industries in the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




**Successful versus unsuccessful closures.** Not all firm closures can be interpreted as a "failure" of the business. Reasons that a firm may close "successfully" include owner retirement or the emergence of a more profitable business alternative.

To date, the 1992 Characteristics of Business Owners Survey (CBO) is the only dataset released by the Census Bureau that classifies firm closures into successful and unsuccessful subsets.[4] The CBO survey, administered in 1996, asked owners of businesses that had closed between 1992 and 1995 the question, "Which item below describes the status of this business at the time the decision was made to cease operations?" Only the responses "successful" and "unsuccessful" were permitted. A firm

[4] CBO data from the 1997 and 2002 Economic Censuses do not include statistics on successful and unsuccessful closure. To date, the 1992 CBO is the only U.S. Census dataset that does.

reported to be unsuccessful at time of closure is understood to be a firm failure. Figure I-4 shows comparative data for the proportion of firms in the U.S. closing between 1992 and 1995 that failed.[5]

According to the CBO, closed African American-owned construction firms were the most likely to report "unsuccessful" when asked about the status of the business when it closed. About 82 percent of the African Americans who had owned and closed construction firms reported an unsuccessful business (77% for all African American business owners who had closed businesses). Only 58 percent of non-minority men who had owned construction businesses said that their business was unsuccessful at time of closing, a substantial disparity. The differences in status of a construction firm at closing were also large between other minorities (Asian Americans and Native Americans) and non-minority men.

Differences in the successful versus unsuccessful closing of construction firms were only somewhat narrower for other groups:

- About 71 percent of Hispanic Americans who had owned and closed construction businesses reported the business to be unsuccessful at time of closing, a substantial difference from the results for non-minority men.
- About 66 percent of women who had owned and closed construction firms reported the business to be unsuccessful, compared to 58 percent for non-minority men.

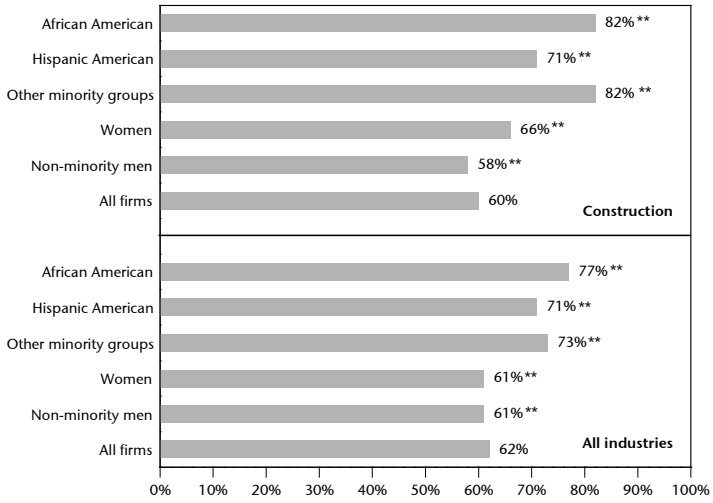
**Figure I-4.**
**Comparative "failure" rates for firms that closed between 1992 and 1995, construction and all industries in the U.S.**

Note:

** Denotes that the difference between the indicated proportion and the corresponding proportion for all firms is significant at the 95% confidence level.

Source:

U.S. Census Bureau, 1996 Characteristics of Business Owners Survey (CBO).




Results are similar when comparing successful versus unsuccessful status of closed firms for all sectors combined. Although this analysis is national in scope, these results suggest that higher overall closure rates for minority-owned firms in California may indicate higher rates of actual business failure.

[5] All CBO data should be interpreted with caution due to the fact that firms that did not respond to the survey cannot be assumed to have the same characteristics of ones that did. This report does not include CBO data on firm closure because firms not responding to the survey were found to be much more likely to have closed than ones that did. Holmes, Thomas J. and James Schmitz. 1996. "Nonresponse Bias and Business Turnover Rates: The Case of the Characteristics of Business Owners Survey." *Journal of Business & Economic Statistics*. 14(2): 231-241.

This study includes CBO data on firm success because there is no compelling reason to believe that closed firms responding to the survey would have reported different rates of success/failure than those closed firms that did not respond to the survey. Headd, Brian. U.S. Small Business Administration, Office of Advocacy. 2000. *Business Success: Factors leading to surviving and closing successfully*. Washington D.C.: 12.

**Reasons for differences in failure rates.** Several researchers have offered explanations for higher rates of successful closure among non-DBE firms and higher rates of failure among DBE firms:

- Minority business failure is largely due to barriers in access to capital. A regression analysis identifies initial capitalization as the most significant factor in determining firm viability. Because African American-owned businesses secure smaller amounts of debt equity in the form of loans, they are more inclined to fail. Difficulty in accessing capital is found to be particularly acute for minority firms in the construction industry.[6]

- Prior work experience in a family member's business and prior work experience in a similar business are found to be strong determinants of business viability. Because African American business owners are much less likely to have family business experience and/or similar business experience, their firms are less likely to survive.[7]

- Level of education is found to be a strong determinant in business survival. Level of education explains a significant portion of the gap in firm closure rates between African Americans and non-minority firms.[8]

- Non-minority business owners have the opportunity to pursue a much wider array of business activities, which increases their likelihood of closing successful businesses to pursue more profitable business alternatives. Minority business owners, especially those who do not speak English, have greatly limited employment options and are less likely to close a successful business.[9]

- The possession of greater initial capital and the generally higher levels of education among Asian Americans determine the high rate of survival of Asian American-owned firms compared to other minority-owned firms.[10]

**Summary.** Available data suggest that closure rates for African American-owned firms in California are higher than other firms. Based on national results for the construction industry, and DRC statistics on differential rates of DBE closures, African American-owned construction firms in California are likely to have had higher rates of closure than other construction firms in California. Although data are not available for just businesses located in Southern California, the statewide results are pertinent as Southern California accounts for 57 percent of total businesses in the state.

National data indicate that African Americans who owned and closed construction firms are much more likely to have done so because the firm was unsuccessful. Reasons why business failure rates are higher for African American-owned construction firms have been analyzed at the national level.

---

[6] Bates, Timothy and Caren Grown. 1991. "Commercial Lending Practices and the Development of Black-Owned Construction Companies." Center for Economic Studies, U.S. Census Bureau.

[7] Robb, A. and Fairlie, R. 2005. "Why are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital." University of California, Santa Cruz.

[8] Ibid. 24.

[9] Bates, Timothy. 2002. "Analysis of Young Small Firms That Have Closed: Delineating Successful from Unsuccessful Closures." Center for Economic Studies, U.S. Census Bureau.

[10] Bates, Timothy. 1993. "Determinants of Survival and Profitability Among Asian Immigrant-Owned Small Businesses." Center for Economic Studies, U.S. Census Bureau.

## Comparative Rates of Expansion and Contraction

Comparative rates of expansion and contraction of MBE and non-MBE firms are also useful indicators of the relative success of minority-owned businesses. As with rates of business closures, data are available for California but not smaller areas within the state.

**Expansion.** The SBA's 2005 study of minority business dynamics from 1997-2001 also examined rates of expansion and contraction for minority-owned firms in California that had paid employees at the starting time period for the analysis ("employer firms").

Figure I-5 compares the percentage of firms that increased their total employment between 1997 and 2001. About one-third of all firms expanded according to the SBA study. However, only 26 percent of African American-owned firms expanded over this period. Relatively more Hispanic American-owned firms expanded over this period compared with all firms in California. The percentage of Native American-owned firms in California that expanded was considerably above the percentage for all firms. The likelihood of expansion was about the same for California Asian American-owned firms as all California firms.

Results for African American-, Asian American- and Hispanic American-owned firms in California are consistent with what was found for the United States for 1997 to 2001.

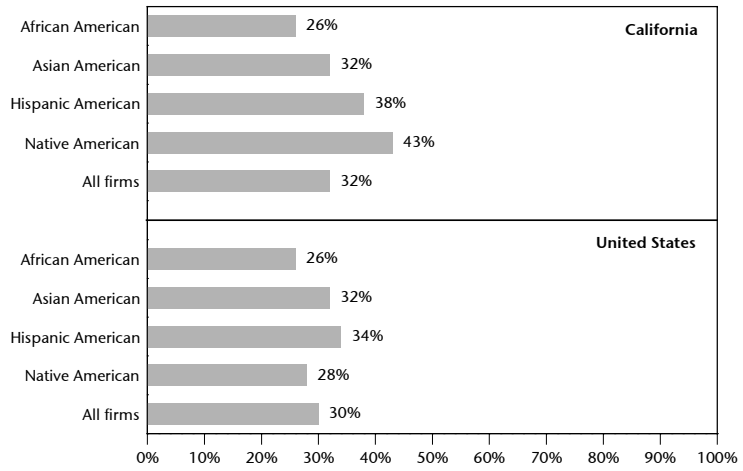
**Figure I-5.**
**Percentage of firms that expanded employment 1997-2001, California and the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




The results above are for all firms, not just construction firms. The 2005 SBA study did not report expansion rates for construction firms in California, only for construction firms in the nation.

Figure I-6 examines the percentage of construction firms that expanded and the share of all firms that expanded for the United States. The construction industry showed differences in expansion rates for all groups. As with all firms for the nation, African American-owned construction firms were less likely to have expanded between 1997 and 2001 than all construction firms. Rates of expansion for construction were similar to rates for all industries for each group except for Hispanic American-owned firms, which showed higher rates of expansion in the construction industry. This suggests that differences in overall rates of expansion between minority-owned firms and all firms in California may also be true for the California construction industry.

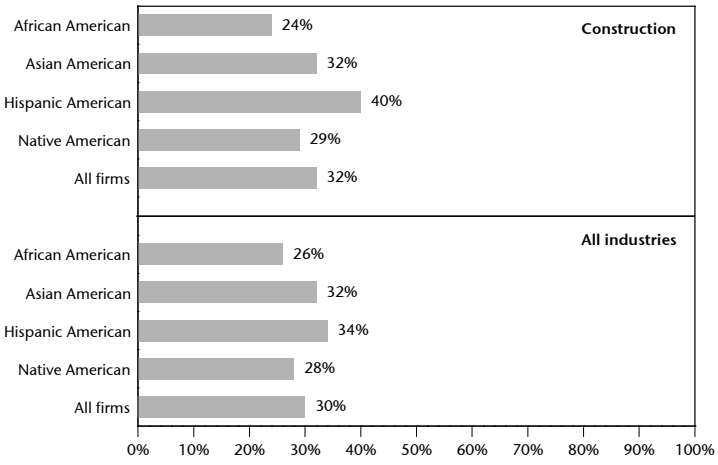
**Figure I-6.**
**Percentage of firms that expanded employment 1997-2001, construction and all industries in the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




**Contraction.** Figure I-7 examines the percentage of firms that reduced their employment between 1997 and 2001. As with the analysis of expanding firms, these data track activity of employer firms beginning in 1997. African American- and Hispanic American-owned firms were less likely to have contracted than all firms, both in California and in the nation. Alternatively, Asian American- and Native American-owned firms were no more likely to have contracted than all firms, in both California and the United States.

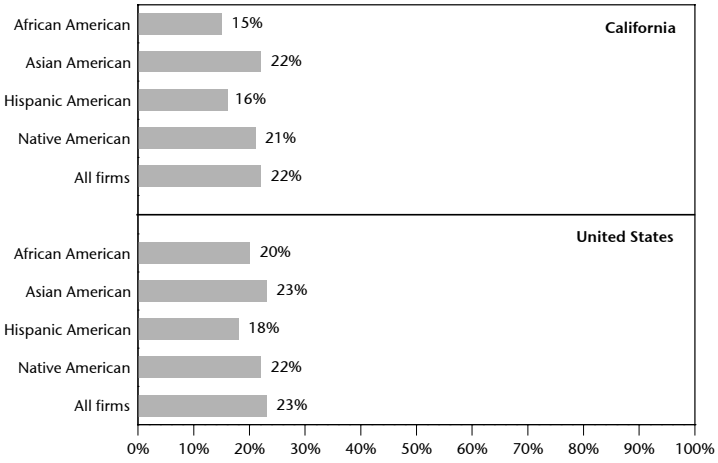
**Figure I-7.**
**Percentage of firms that contracted employment 1997-2001, California and the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




The above results pertain to all firms in California. As with expansion, the SBA study did not report results for contraction in the California construction industry. Asian-American- and Hispanic American-owned construction firms had lower rates of contraction than all construction firms in the United States. Figure I-8 shows these results. Alternatively, African American- and Native American-owned construction firms were no more likely to have contracted than were all construction firms across the nation.

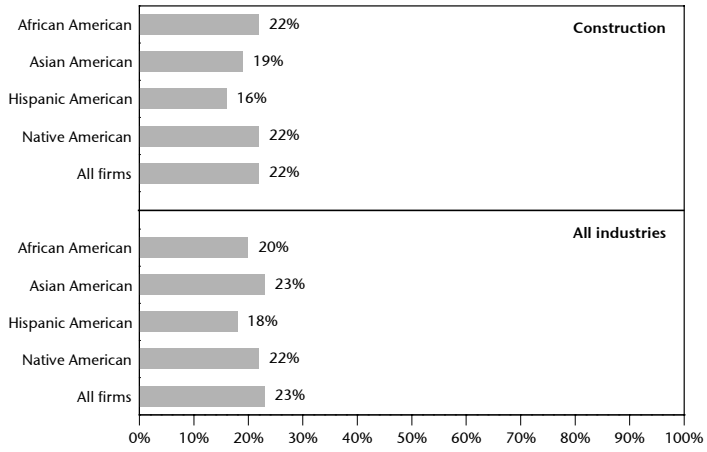
**Figure I-8.**
**Percentage of firms that contracted employment 1997-2001, construction firms and all industries in the U.S.**

Note:

Data refers only to employer firms. Sample sizes not reported, but statistics are consistent with SBA data quality guidelines.

Source:

Lowrey, Ying. 2005. "Dynamics of Minority-Owned Employer Establishments, 1997-2001." U.S. Small Business Administration Office of Advocacy. Washington, D.C.




**Summary.** Between 1997 and 2001, the SBA study found that 32 percent of California employer firms had expanded employment, 22 percent had contracted employment and 31 percent had closed.

- African American-owned firms were less likely to expand or contract (and more likely to close) than other firms.
- Asian American-owned firms were as likely to expand or contract compared with all firms in California.
- Hispanic American- and Native American-owned firms were more likely to expand and less likely to contract than all firms in the state.

Other than African American-owned firms, minority-owned employer firms fared as well or generally better than all firms in California by these measures of business performance.

## Business Earnings/Receipts

Annual receipts and business earnings are also an indicator of the size and success of a business.

**Business receipts from 2002 survey of business owners.** BBC examined receipts for firms across all industries in San Diego County, Southern California and the U.S. using data from the 2002 Survey of Business Owners (SBO), conducted by the U.S. Census Bureau. BBC also analyzed receipts for the construction industry (data for just the engineering industry were not available).

**All firms.** Figure I-9 presents the mean annual receipts for 2002 for employer and non-employer firms, by race/ethnicity and gender. Figure I-10 presents the mean annual receipts for 2002 for firms with paid employees only ("employer firms").[11, 12]

[11] For some counties included in Southern California, SBO data are withheld from public either to protect confidentially of individual companies or because data do not meet publication standards. No data were available for any Native American-owned firms in San Bernardino County, Native American employer firms in Ventura County or African American employer firms in Riverside County and San Bernardino County. The results presented in Figures I-9 and I-10 do not include figures for these groups.

[12] For county level data, the 2002 SBO only provided figures for each minority group and one figure for all firms, including publically-traded companies and companies not classifiable by race or gender. From these data, figures for firms owned by non-Hispanic whites and men could not be produced.

**Figure I-9.**
**Mean annual receipts (thousands) for all firms, by race/ethnicity and gender of owners, 2002**

Note:
Includes both employer and non-employer firms.

Source:
2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.

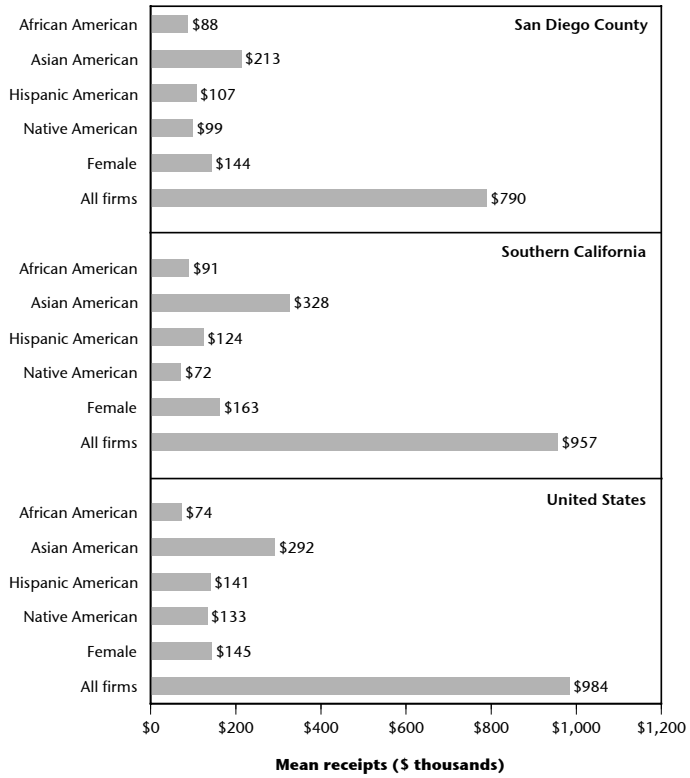
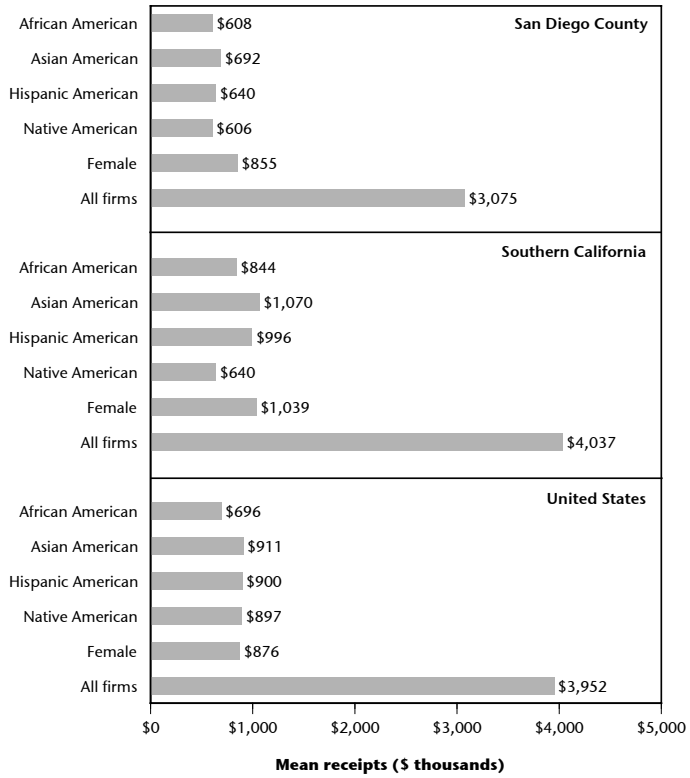



**Figure I-10.**
**Mean annual receipts (thousands) for all firms with paid employees, by race/ethnicity and gender of owners, 2002**

Note:
Includes only employer firms.

Source:
2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.



The SBO data for firms across all industries indicate that the average receipts for minority-owned businesses were much lower than those for all firms, with some minority groups fairing worse than others.

In San Diego County and Southern California, among employer and non-employer firms, businesses with African American and Native American owners had the lowest average receipts. For example, receipts for African American-owned firms in San Diego County averaged $88,000 in 2002 and the average for Native American-owned firms was $99,000 in that year (including both employer and non-employer firms). For all firms in San Diego County, 2002 receipts averaged $790,000. Firms owned by Asian Americans had the highest average receipts among minority-owned firms ($213,000) but were still far below the averages for all firms.

When only considering employer firms, differences in average receipts are also seen (see Figure I-10).

**Construction industry.** The study also analyzed SBO data for firms in the construction industry. Since data for construction firms specific to San Diego County and Southern California were not available, receipts for the construction industry are analyzed at the state and national level.

The results for the California and United States construction industries are presented in Figure I-11 and I-12. Figure I-11 presents the mean annual receipts for 2002 for employer and non-employer firms, by race/ethnicity and gender. Figure I-12 presents the mean annual receipts for 2002 for firms with paid employees only ("employer firms"). The SBO data used in this analysis includes incorporated and unincorporated firms, but not publicly-traded companies.[13]

[13] Since the 2002 SBO public access data presents figures for race and ethnicity separately, race/ethnicity groups could not be defined along the guidelines presented in Appendix J. Figures I-11 and I-12 present data first for each race regardless of Hispanic origin and then for both Hispanics and non-Hispanics regardless of race. There is also a third gender category for firms owned jointly by men and women.

**Figure I-11.**
**Mean annual receipts (thousands) for construction firms, by race/ethnicity and gender of owners, 2002**

Note:

Includes both employer and non-employer firms.

Source:

2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.

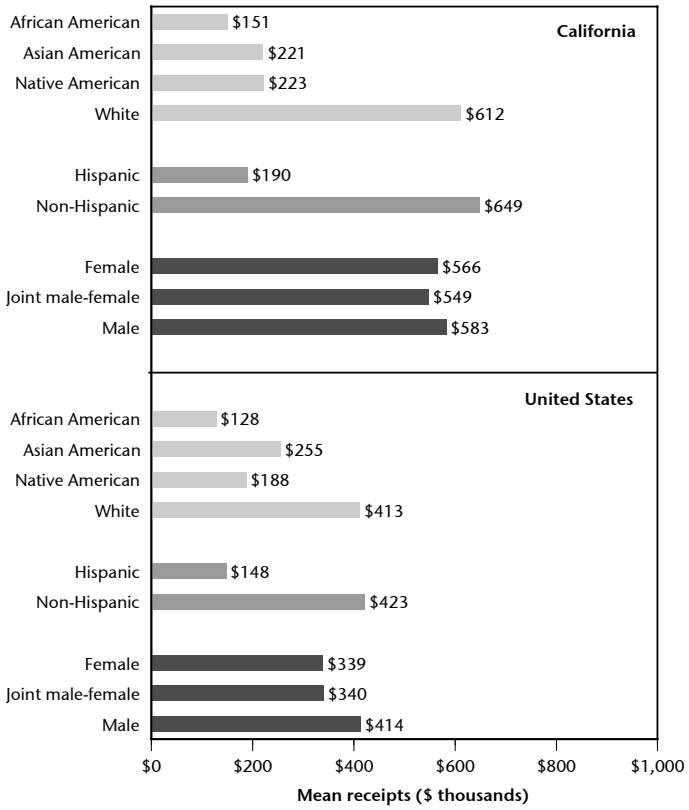


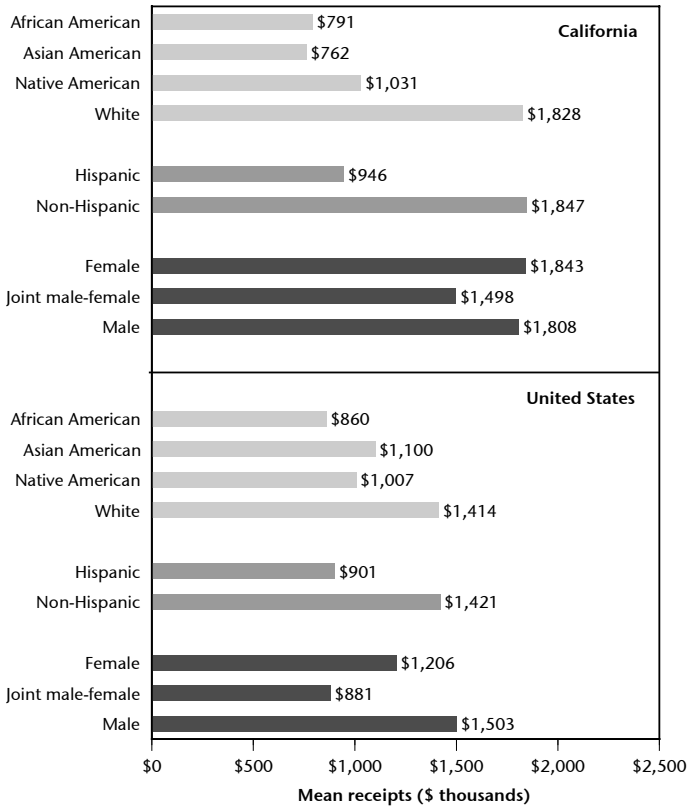

**Figure I-12.**
**Mean annual receipts (thousands) for construction firms with paid employees, by race/ethnicity and gender of owners, 2002**

Note:

Includes only employer firms.

Source:

2002 Survey of Business Owners, part of the U.S. Census Bureau's 2002 Economic Census.



The SBO data indicate that average 2002 receipts for minority-owned construction firms in California were considerably lower than for white and non-Hispanic firms. The percent difference is greatest when including non-employer firms.

- African American-owned firms' average receipts were about one-quarter the average for white-owned firms.

- Asian American- and Native American-owned firms had 36 percent of the average receipts of white-owned firms.

- Hispanic-owned firms had about 30 percent of the average receipts of non-Hispanic white-owned construction companies.

The patterns between minority and white or non-Hispanic construction firms are similar in California and the United States, although the disparities are larger in California. A recent SBA study found similar differences when examining firms in all industries across the U.S.[14]

These results for the California construction industry suggest that the differences in the 2002 mean receipts seen for all firms in Southern California and San Diego County may also be present for the local construction industry.

Receipts for female-owned construction firms were about the same as male-owned firms in California in 2002.

**Summary.** Results from the 2002 SBO indicate:

- Lower average receipts for African American-, Asian American-, Hispanic American-, Native American- and women-owned firms than all firms in San Diego County, Southern California and the United States.

- Low average receipts for African American-, Asian American-, Hispanic American- and Native American-owned construction firms compared to non-minority owned construction firms in California and the nation.

- Greater disparity in receipts between minority and non-minority construction businesses in California than in the nation.

[14] Lowrey, Ying. 2007. *Minorities in Business: A Demographic Review of Minority Business Ownership*. Office of Economic Research, Office of Advocacy, U.S. Small Business Administration.

**Business earnings for self-employed individuals in construction and engineering.** Academic researchers and policymakers have argued that self-employment is an effective means for disadvantaged workers to escape discrimination in the marketplace and advance economically.[15] In order to assess the relative business success of self-employed minorities and women in the construction and engineering industries, BBC evaluated earnings using the Public Use Micro-Sample (PUMS) data from the 2000 U.S. Census and the 2007 American Community Survey (ACS). For each sample, BBC examined incorporated and unincorporated business owners between ages 16 and 65 who reported positive business earnings. Since the 2000 Census reports earnings for the previous year, figures presented here are for 1999. The ACS is conducted continually throughout the year and reports earnings for one year prior to the date the survey is recorded, thus the figures presented from these data are for a 12-month time period between 2006 and 2007.

**Construction.** Figure I-13 gives 1999 earnings for construction business owners in San Diego County, Southern California and the United States. Due to small sample sizes in San Diego County, four categories are presented: minority- and non-minority-owned businesses and female- and male-owned businesses. Results for Subcontinent Asian Americans are not reported for Southern California analysis due to the small sample size.

In San Diego County, minority business owner earnings were less than three-quarters the earnings for non-Hispanic whites in 1999. Women who owned construction businesses averaged about 57 percent of the average earnings of men in the same year. These differences are statistically significant.

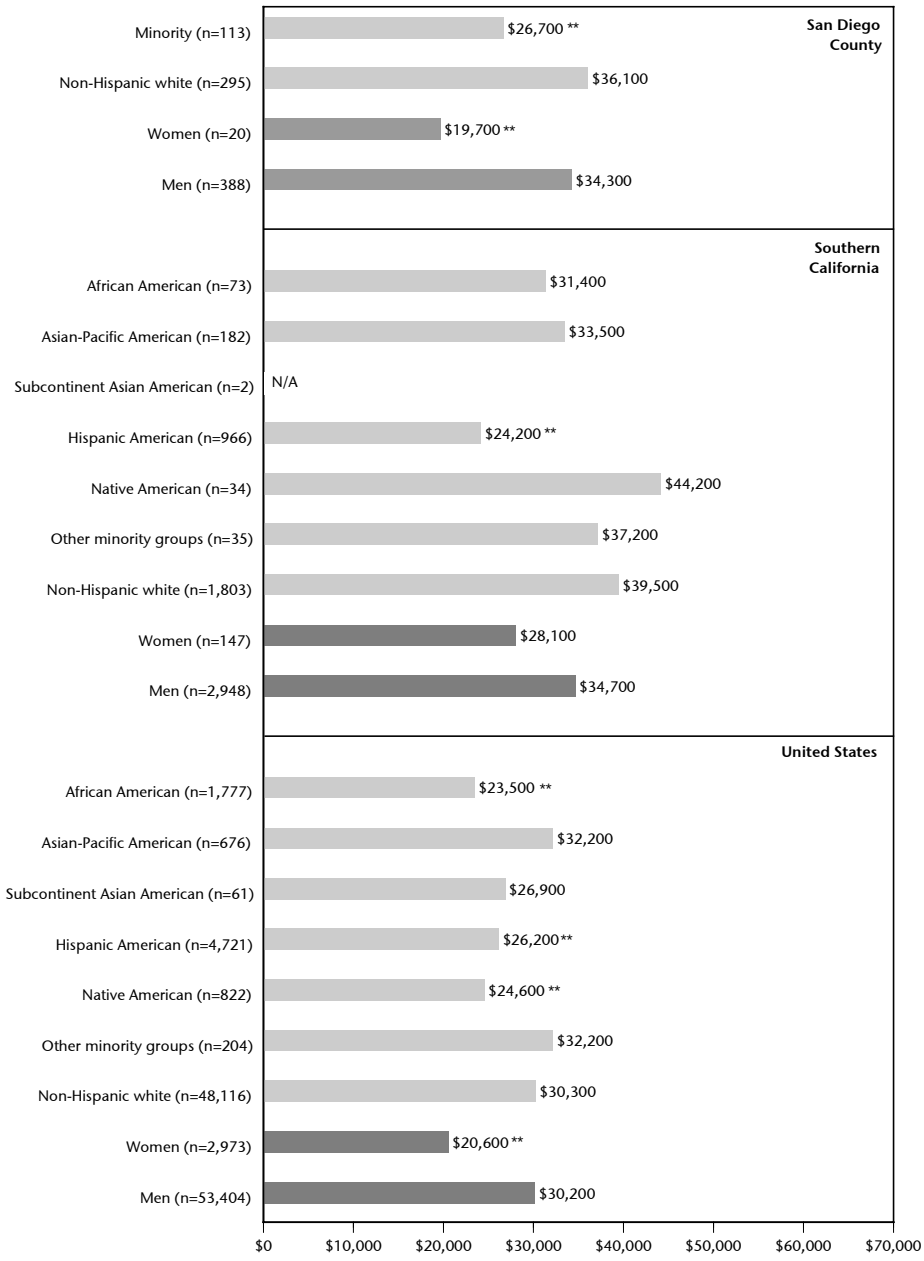
In Southern California, African American, Asian-Pacific American and Hispanic American construction business owners had substantially lower earnings than non-Hispanic white business owners; however, the differences are only statistically significant for Hispanic Americans. Hispanic American business owners' earnings averaged about 60 percent of those of non-Hispanic white owners. Female construction business owners in Southern California earned less than male construction business owners, although the difference is not statistically significant.

Figure I-14 presents findings based on 2006-2007 earnings. Due to small sample sizes in San Diego and Southern California, individual groups were combined for the analyses. In San Diego County, the "minority or female" owner category includes all minority owners and women owners and was compared to non-Hispanic white males. In Southern California, the figure for "all other minority groups" includes African Americans, Native American and "other minorities." (There were no Subcontinent Asian Americans business owners in the 2007 ACS sample of engineering workers in the Southern California.)

The 2006-2007 data show a statistically significant difference in earnings for "minority or female" business owners in San Diego County. The figures for Southern California indicate that Asian-Pacific American and Hispanic construction business owner earnings were substantially less than earnings for non-Hispanic whites, also a statistically significant difference. While earnings for "all other minority groups" were also lower than non-Hispanic whites, the difference is not statistically significant. However, earnings for women business owners in Southern California surpassed those for men in the construction industry in 2006-2007 (this difference is not statistically significant).

[15] Fairlie, Robert. 2001. "Earnings Growth Among Disadvantaged Business Owner." *Final Report to the Office of Advocacy, U.S. Small Business Administration.*

**Figure I-13. Mean annual business owner earnings in the construction industry, 1999**




Note:

The sample universe is business owners between ages 16 and 65 who reported positive earnings.

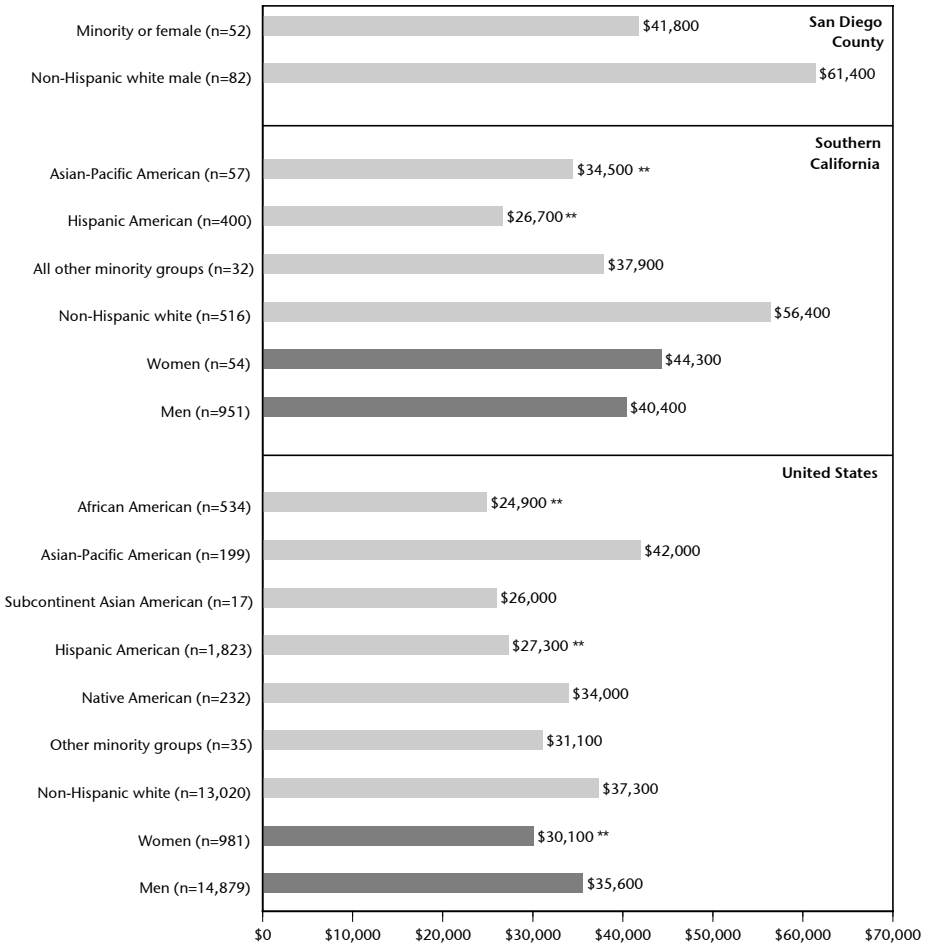
** Denotes statistical significance at the 95% confidence level.

Sample size too small for Subcontinent Asian American-owned firms in Southern California for purposes of this analysis.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% Public Use Micro-sample data.

**Figure I-14. Mean annual business owner earnings in the construction industry, 2006-2007**




Note:

The sample universe is business owners between ages 16 and 65 who reported positive earnings.

** Denotes statistical significance at the 95% confidence level.

In Southern California, "All other minority groups" includes African American, Subcontinent Asian American, Native American and other minority groups. Sample sizes for these race/ethnicity groups were too small in Southern California for purposes of this analysis.

Source:

BBC Research & Consulting from 2007 ACS Public Use Micro-sample data.

**Engineering.** The study team also analyzed business earnings in engineering in San Diego County, Southern California and United States in 1999 and 2006-2007. The results are presented in figures I-15 and I-16. As sample sizes for San Diego County and Southern California are small, BBC combined groups for the analysis.

Figure I-15 shows that for engineering firms in San Diego County, "minority or female" business owners' earnings were, on average, lower than non-Hispanic white male business owners' earnings—a statistically significant difference. In Southern California, as well as the United States, minority engineering business owners earned less than non-Hispanic white owners and female owners earned less than their male counterparts in 1999. However, the disparities are only statistically significant for females.

Results for 2006-2007, shown in Figure I-16, are consistent with the disparities in engineering business earnings observed in 1999. Again, the disparity is only statistically significant for female business owners. (Due to the small sample size of business owners in the engineering industry in San Diego County, figures for San Diego County in 2006-2007 are not reported.)

## Figure I-15.
## Mean annual business owner earnings for engineering firms, 1999

Note:

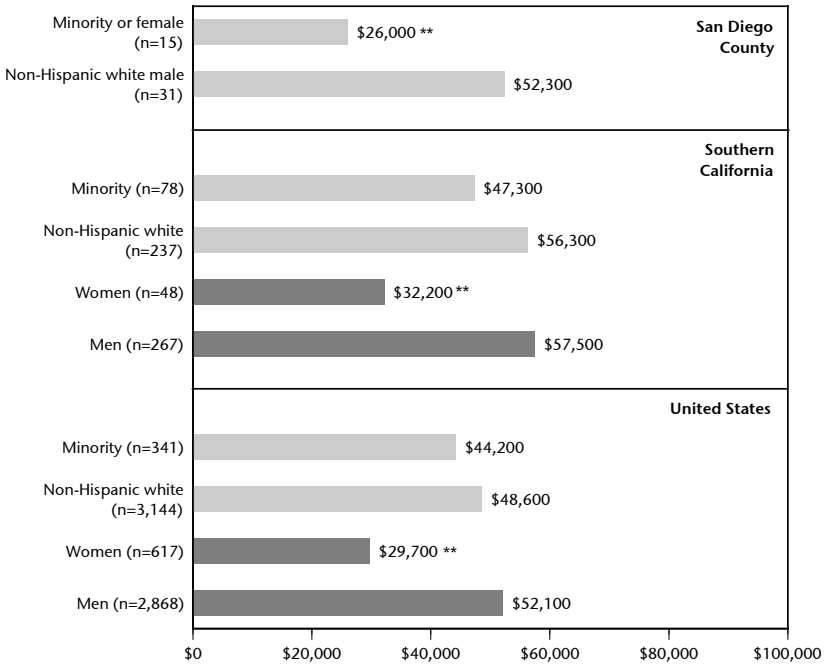
The sample universe is business owners between ages 16 and 65 who reported positive earnings.

The data presented in this table include all business owners in the engineering industry. The study team was unable to restrict the population to the specific occupations defined in Appendix J due to small sample sizes.

** Denotes statistical significance at the 95% confidence level.

Source:

BBC Research & Consulting from 2000 U.S. Census 5% Public Use Micro-sample data.




## Figure I-16.
## Mean annual business owner earnings for engineering firms, 2006-2007

Note:

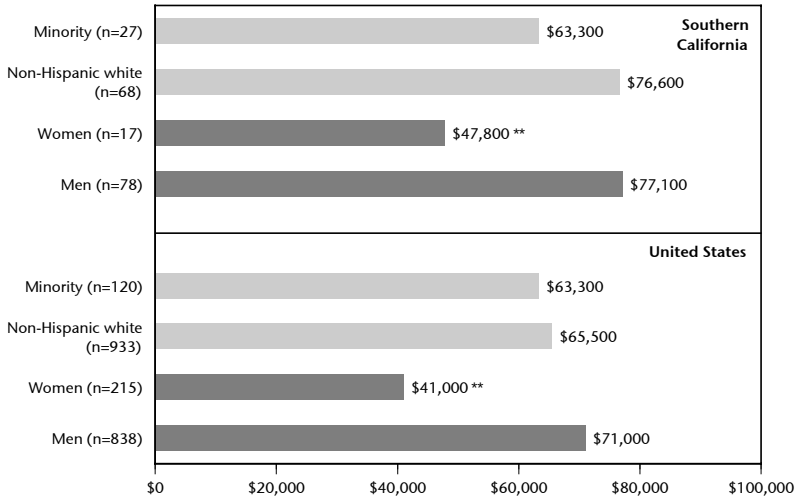
The sample universe is business owners between ages 16 and 65 who reported positive earnings.

The data presented in this table include all business owners in the engineering industry. The study team was unable to restrict the population to the specific occupations defined in Appendix J due to small sample sizes.

** Denotes statistical significance at the 95% confidence level.

Source:

BBC Research & Consulting from 2007 ACS Public Use Micro-sample data.



**Regression analysis of business earnings.** Differences in business owner earnings may be at least partially accounted for by race/ethnicity- and gender-neutral factors such as age, marital status or educational attainment. BBC therefore applied regression analysis to the 2000 and 2007 PUMS data to examine whether disparities in business earnings for 1999 and 2006-2007 remained after controlling for certain neutral factors. Consistent with past court-reviewed research, BBC applied an ordinary least squares (OLS) regression to create models for Southern California. The OLS model of construction and engineering business owner earnings in Southern California included 3,410 observations for 1999 and 1,100 observations for 2006-2007.

Consistent with model specifications that have been reviewed by the courts, the dependent variable in this model is the natural logarithm of business earnings. Business owners reporting zero or negative business earnings were excluded, as were observations where the Census Bureau had imputed the value of business earnings. Apart from variables indicating the race, ethnicity and gender of the business owner, the model also used available measures from the PUMS data considered likely to affect earnings potential, including age, age-squared, marital status, ability to speak English well, disability condition and educational attainment. This model is very similar to models reviewed by the courts after other recent disparity studies.[16]

**Results for the Southern California construction and engineering industries.** In line with previous studies reviewed by the courts, BBC developed an OLS model for the combined construction and engineering industries. Figure I-17 on the next page shows the results of this OLS model for 1999 earnings. The model indicates that several neutral factors were statistically significant in predicting the 1999 earnings of business owners in the Southern California combined construction and engineering industries:

- Older business owners had greater earnings, but this marginal effect declined for the oldest individuals;
- Business owners who are married tended to have greater business earnings;
- Owners who had the ability to speak English well, on average, had greater earnings; and
- Business owners with less than a high school degree tended to have lower business earnings (compared to business owners with just a high school degree).

[16] For example, National Economic Research Associates, Inc. 2000. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Minnesota Department of Transportation; and National Economic Research Associates, Inc. 2004. *Disadvantaged Business Enterprise Availability Study*. Prepared for the Illinois Department of Transportation.

After accounting for neutral factors, there are statistically significant disparities for Hispanic American and female business owners. There is also a disparity for African Americans business owners, although this difference is not statistically significant, which may be due to small sample size.

**Figure I-17.**
**Southern California combined construction and engineering business owner earnings model, 1999**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | 7.215 | 18.98 ** |
| Age | 0.114 | 6.54 ** |
| Age-squared | -0.001 | -6.70 ** |
| Married | 0.419 | 8.72 ** |
| Speaks English well | 0.253 | 3.59 ** |
| Disabled | 0.044 | 0.82 |
| Less than high school | -0.262 | -3.92 ** |
| Some college | 0.042 | 0.74 |
| Four-year degree | 0.120 | 1.34 |
| Advanced degree | 0.364 | 3.44 ** |
| African American | -0.159 | -1.08 |
| Asian-Pacific American | -0.088 | -1.05 |
| Subcontinent Asian American | 0.099 | 0.34 |
| Hispanic American | -0.261 | -4.33 ** |
| Native American | -0.013 | -0.04 |
| Other minority group | 0.265 | 1.26 |
| Female | -0.451 | -4.51 ** |

Note: ** Denotes statistical significance at the 95% confidence level.

Source: BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

Figure I-18 shows the results of the combined engineering and construction model using 2006-2007 earnings. The results indicate statistically significant disparities in earnings received for Hispanic American business owners, while the disparity for African American business owners continued to not be statistically significant (possibly due to the small sample size). While the disparity in business earnings for female construction business owners remained in 2006-2007, the difference is no longer statistically significant.

**Figure I-18.**
**Southern California combined construction and engineering business owner earnings model, 2006-2007**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | 7.666 | 12.15 ** |
| Age | 0.106 | 3.60 ** |
| Age-squared | -0.001 | -3.64 ** |
| Married | 0.294 | 3.31 ** |
| Speaks English well | 0.383 | 4.09 ** |
| Disabled | -1.422 | -6.23 ** |
| Less than high school | -0.205 | -2.11 ** |
| Some college | -0.034 | -0.26 |
| Four-year degree | 0.208 | 1.50 |
| Advanced degree | 0.524 | 2.78 ** |
| African American | -0.355 | -1.27 |
| Asian-Pacific American | -0.202 | -1.60 |
| Subcontinent Asian American | N/A | N/A |
| Hispanic American | -0.358 | -2.44 ** |
| Native American | 0.152 | 0.61 |
| Other minority group | 0.228 | 0.50 |
| Female | -0.132 | -0.86 |

Note: ** Denotes statistical significance at the 95% confidence level.
There were no Subcontinent Asian Americans business owners in the 2007 ACS sample of engineering workers in the Southern California.

Source: BBC Research & Consulting based on analysis of 2007 ACS Public Use Microdata Sample.

**Results specific to the Southern California construction industry.** As the influences on business owner earnings might differ between construction firms and engineering firms, BBC developed separate models for construction and engineering earnings in 1999. Due to the small sample size for construction and engineering business owners in California in the 2007 ACS, BBC did not develop construction- and engineering-only models for 2006-2007 earnings.

Figure I-19 presents the results of the OLS model of business owner earnings specific to the Southern California construction industry in 1999.

**Figure I-19.**
**Southern California construction business owner earnings model, 1999**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | 7.449 | 18.94 ** |
| Age | 0.103 | 5.68 ** |
| Age-squared | -0.001 | -5.80 ** |
| Married | 0.446 | 8.91 ** |
| Speaks English well | 0.229 | 3.21 ** |
| Disabled | 0.061 | 1.09 |
| Less than high school | -0.262 | -3.88 ** |
| Some college | 0.042 | 0.73 |
| Four-year degree | -0.003 | -0.03 |
| Advanced degree | 0.246 | 1.68 * |
| African American | -0.177 | -1.14 |
| Asian-Pacific American | -0.074 | -0.81 |
| Subcontinent Asian American | 0.557 | 2.34 ** |
| Hispanic American | -0.280 | -4.46 ** |
| Native American | -0.027 | -0.08 |
| Other minority group | 0.204 | 0.88 |
| Female | -0.437 | -3.72 ** |

Note: ** Denotes statistical significance at the 95% confidence level.
Source: BBC Research & Consulting, based on analysis of 2000 Census Public Use Microdata Sample.

The construction-only model of business owner earnings for 1999 shows very similar influences from neutral factors as observed in the 1999 combined construction and engineering model. After controlling for these influences, model results indicate significant disparities in earnings for Hispanic American and female business owners in the construction industry. African American, Asian-Pacific American and Native American business owners also have lower earnings, but the differences are not statistically significant. Model results also show that construction business owners in the Subcontinent Asian group are likely to earn more than similarly situated non-Hispanic white male owners.

**Results specific to the engineering industry.** Figure I-20 presents the results of the OLS regression model of business owner earnings for California engineering firms in 1999.

**Figure I-20.**
**Southern California engineering business owner earnings model, 1999**

| Variable | Coefficient | t-statistic |
|---|---|---|
| Constant | 3.887 | 2.50 ** |
| Age | 0.238 | 3.76 ** |
| Age-squared | -0.003 | -3.87 ** |
| Married | 0.124 | 0.78 |
| Speaks English well | 1.557 | 3.27 ** |
| Disabled | -0.131 | -0.62 |
| Less than high school | 0.664 | 1.68 * |
| Some college | -0.351 | -1.05 |
| Four-year degree | -0.054 | -0.18 |
| Advanced degree | 0.103 | 0.33 |
| African American | 0.156 | 0.48 |
| Asian-Pacific American | -0.198 | -0.91 |
| Subcontinent Asian American | -0.287 | -0.81 |
| Hispanic American | -0.065 | -0.28 |
| Native American | 0.283 | 1.56 |
| Other minority group | 0.451 | 1.02 |
| Female | -0.619 | -3.40 ** |

Note: *,** Denote statistical significance at the 90% and 95% confidence levels, respectively.
Source: BBC Research & Consulting based on analysis of 2000 Census Public Use Microdata Sample.

The engineering business owner earnings model for 1999 indicates that women business owners in Southern California experience significant earnings disparities after accounting for neutral factors.

## Results from the Availability Survey

The study team's Availability Survey provides information on firm revenue, size of contracts and past bidding success. This analysis includes results from the 2006 survey conducted for the 2007 Caltrans Study and the 2008-2009 survey.

**Gross revenue of transportation construction, engineering, and other goods and services firms.** Firms responding to the Availability Survey were asked to identify the size range for their gross revenue for the prior year. A second question asked for gross revenue across all California locations for multi-location firms.

Figure I-21 examines the distribution of MBEs, WBEs and majority-owned transportation construction industry firms by revenue class. Relatively more MBEs and WBEs than majority-owned construction firms in California had revenues less than $1 million (a difference that is statistically significant). About 50 percent of white women-owned firms and 68 percent of minority-owned firms reported gross revenue of less than $1 million for 2005. Only 44 percent of majority-owned construction firms had revenues of less than $1 million.

Figure I-21 also shows that relatively few minority- and women-owned firms in the transportation construction industry in California reach annual revenue of more than $5 million per year. More than 25 percent of majority-owned firms reach this revenue threshold compared with 11 percent of MBEs and 14 percent of WBEs in the transportation construction industry.

**Figure I-21.**
**Distribution of firms by gross revenue net size class, transportation construction industry**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

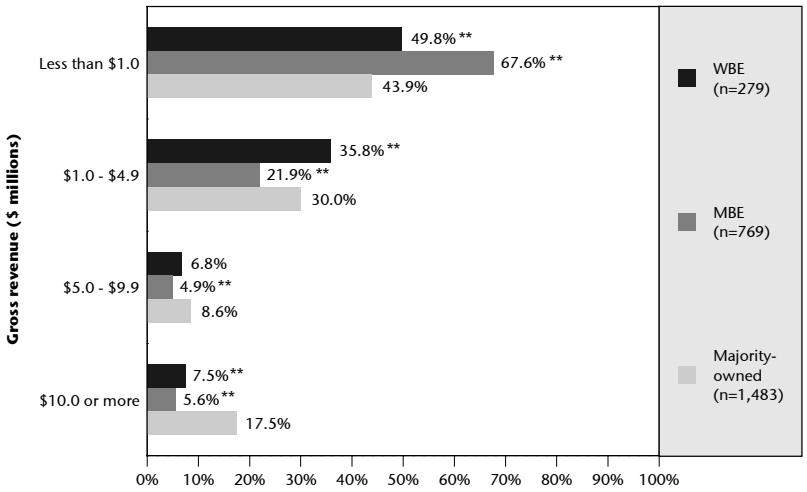
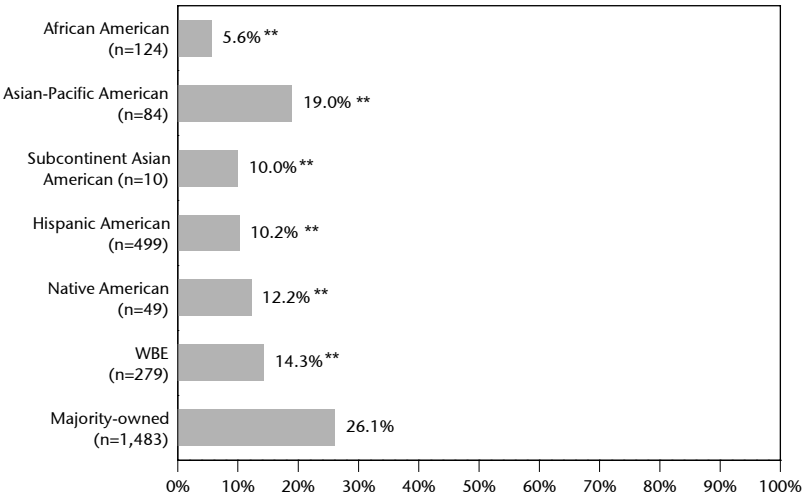



Figure I-22 provides greater detail on transportation construction industry firms that report gross revenue of $5 million or more in 2005. About 19 percent of Asian-Pacific American-owned firms and 14 percent of WBEs reached this revenue level, more than other MBE groups but still short of the proportion of majority-owned firms (26%). Approximately 6 percent of African American-owned transportation construction industry firms reached this revenue level.

**Figure I-22.**
**Percentage of transportation construction industry firms with $5 million or more gross revenues for all California locations**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



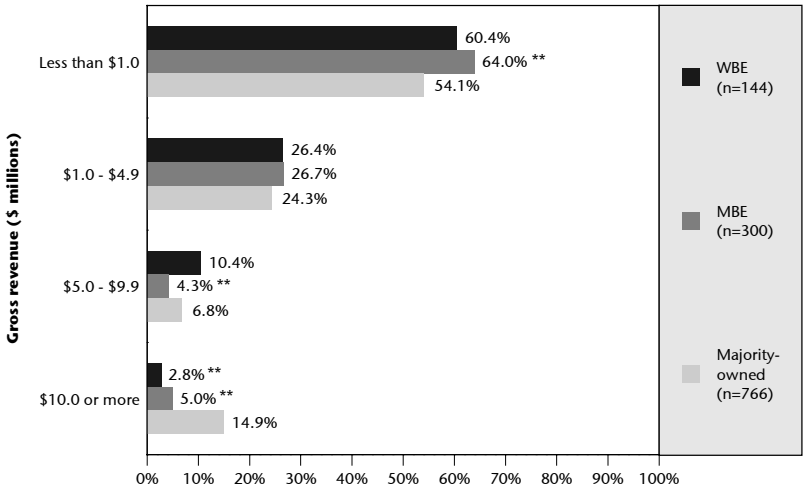
Transportation engineering industry firms interviewed in the Availability Survey were also asked to identify gross revenue across all California locations. Findings are similar to those for transportation construction industry firms (see Figure I-23):

- MBEs and WBEs were disproportionately represented in the lowest revenue size classes (though the difference for WBEs is not statistically significant).
- About 22 percent of majority-owned firms reported gross revenue of $5 million or more, a larger proportion than found for MBEs (9%) and WBEs (13%).

**Figure I-23.**
**Gross revenue of company for all California locations, transportation engineering industry**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

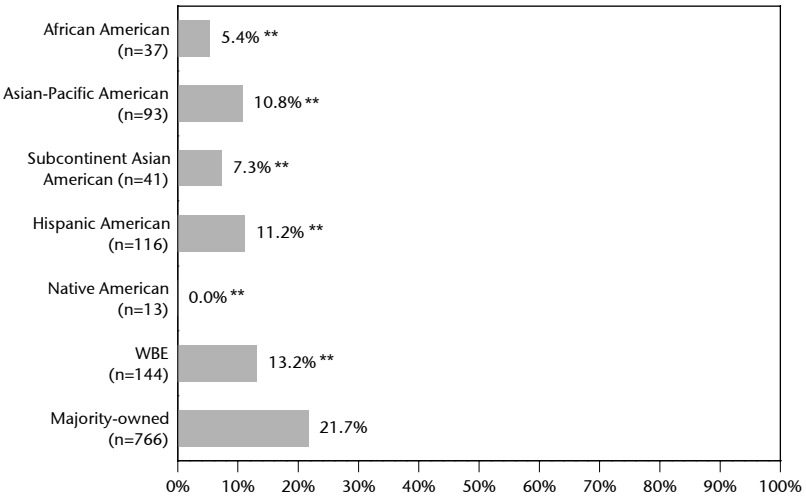



Approximately 13 percent of WBEs and 11 percent of Hispanic American-owned transportation engineering firms had revenue of $5 million or more (compared with 22% of majority-owned firms). About 5 percent of African American-owned firms reported this level of revenue (see Figure I-24).

**Figure I-24.**
**Percentage of transportation engineering industry firms with $5 million or more in gross revenues for all California locations**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



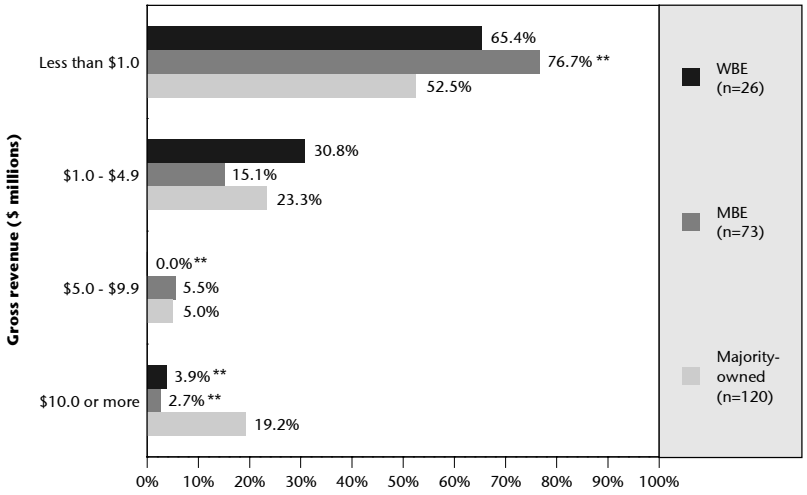
Transportation goods and services industry firms interviewed in the Availability Survey were also asked to identify gross revenue across all California locations. Findings are similar to those for transportation construction industry and transportation engineering industry firms (see Figure I-25):

- MBEs and WBEs were disproportionately represented in the lowest revenue size classes (though the difference for WBEs is not statistically significant).
- About 24 percent of majority-owned firms reported gross revenue of $5 million or more, a larger proportion than found for MBEs (8%) and WBEs (4%).

**Figure I-25.**
**Gross revenue of company for all California locations, transportation goods and services industry**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

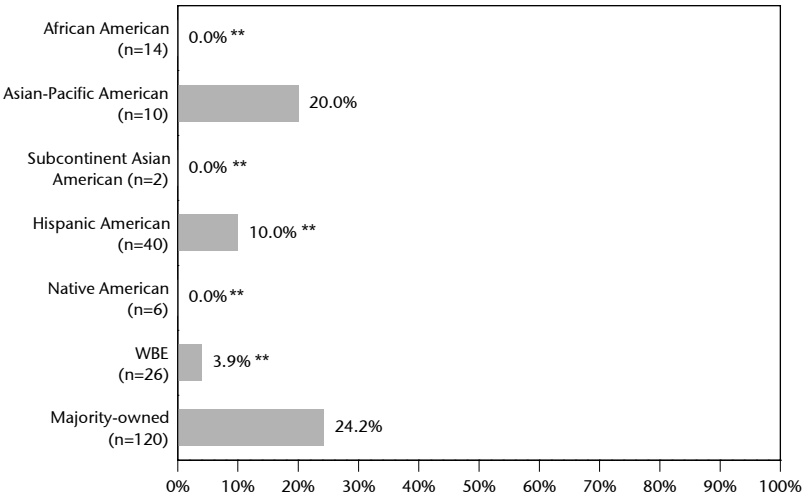



About 20 percent of Asian-Pacific American-owned transportation goods and service firms had revenue of $5 million or more (compared with 24% of majority-owned firms). Approximately 4 percent of WBEs in the transportation goods and services industry reported this level of revenue (see Figure I-26).

**Figure I-26.**
**Percentage of transportation goods and services industry firms with $5 million or more in gross revenues for all California locations**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



**Largest transportation-related contract.** The study team asked firms responding to the Availability Survey to identify the largest transportation-related contract the company was awarded in California in the past five years. Relatively more majority-owned construction firms have received contracts or subcontracts of at least $5 million compared with MBEs and WBEs. Fewer than 10 percent of MBEs and WBEs had received contracts or subcontracts of at least $5 million compared with 20 percent of majority-owned firms (see Figure I-27).

**Figure I-27.**
**Largest transportation-related contract or subcontract that the company was awarded in California in the past 5 years, transportation construction firms**

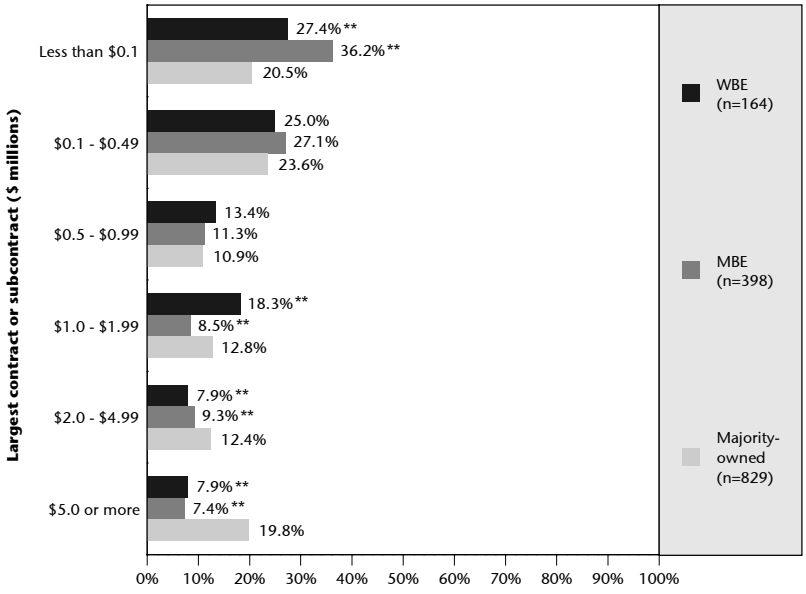
Note:

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.




Among transportation engineering firms, about 12 percent of majority-owned firms and 8 percent of minority-owned firms had received contracts or subcontracts of at least $5 million. Only 4 percent of WBEs had received work of this size. Figure I-28 examines the largest contract or subcontract received by transportation engineering firms.

**Figure I-28.**
**Largest transportation-related contract or subcontract that the company was awarded in California in the past 5 years, transportation engineering firms**

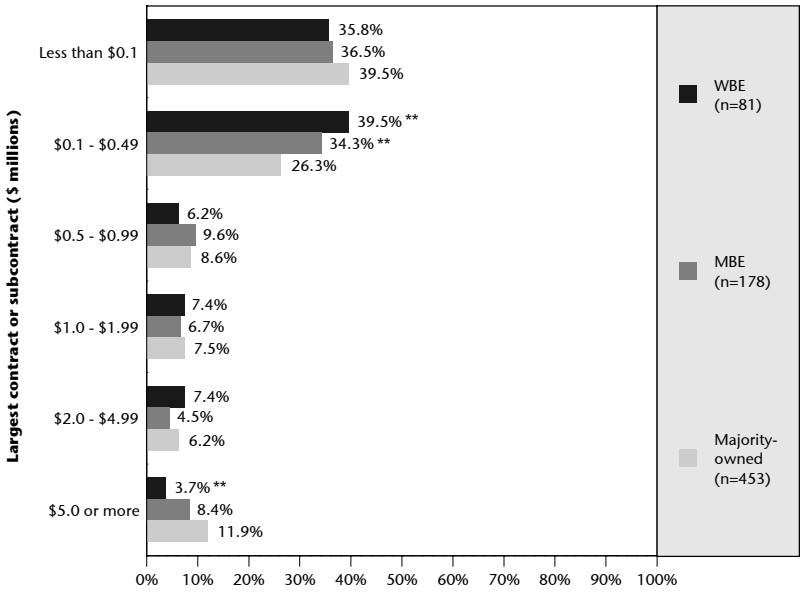
Note:

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.




Among transportation goods and services firms, about 11 percent of majority-owned firms had

received contracts or subcontracts of at least $5 million. Approximately 0 percent of MBEs and WBEs had received work of this size. Figure I-29 examines the largest contract or subcontract received by transportation goods and services firms.

**Figure I-29.**
**Largest transportation-related contract or subcontract that the company was awarded in California in the past 5 years, transportation goods and services firms**

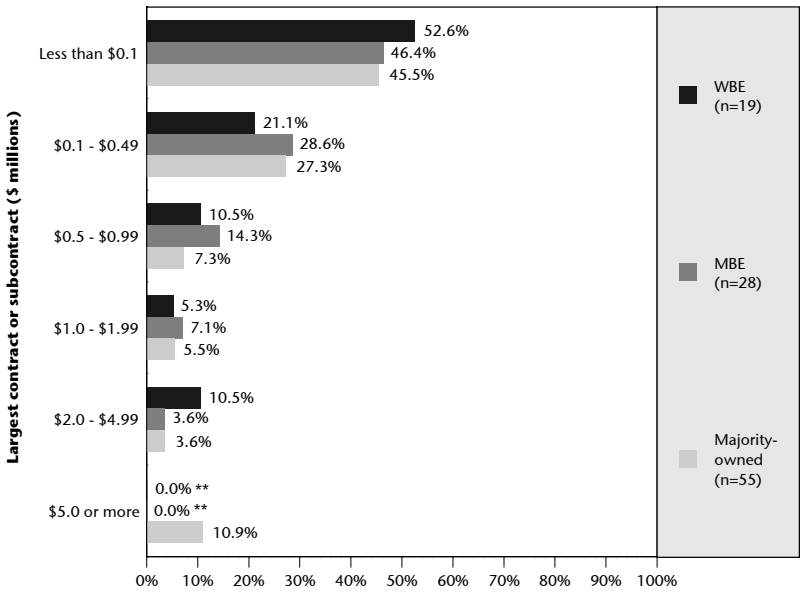
Note:

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.




**Past bidding on government and private sector work.** The Availability Survey asked firm owners and managers whether they had submitted a bid or proposal (including submitting a price quote as a sub or supplier) on transportation-related projects in the past five years. Firms were asked about bidding as a prime or subcontractor on any part of a:

- State, city, county or local transportation agency project; and
- Private sector project.

Responses only include firms that reported being qualified and interested in future government transportation contracting work.

The study team separately examined responses for firms in construction subindustries (including supply and trucking specializations), firms in engineering and professional services subindustries (including engineering firms and related businesses) and firms in goods and services subindustries. Results indicate the extent to which firms have pursued government and private sector work.

**Transportation construction industry firms' past bidding on public sector work.** Approximately 58 percent of majority-owned transportation construction industry firms reporting to be qualified and interested in future transportation construction work in the Availability Survey reported bidding on government work as a prime or a subcontractor, supplier or trucker in the past five years (including submitting price quotes). About 34 percent had bid as a prime contractor and 24 percent had only bid as a subcontractor (including submitting price quotes for supplies or for trucking).

Fewer minority- and women-owned firms reported bidding on past public sector work, as shown in Figure I-30.

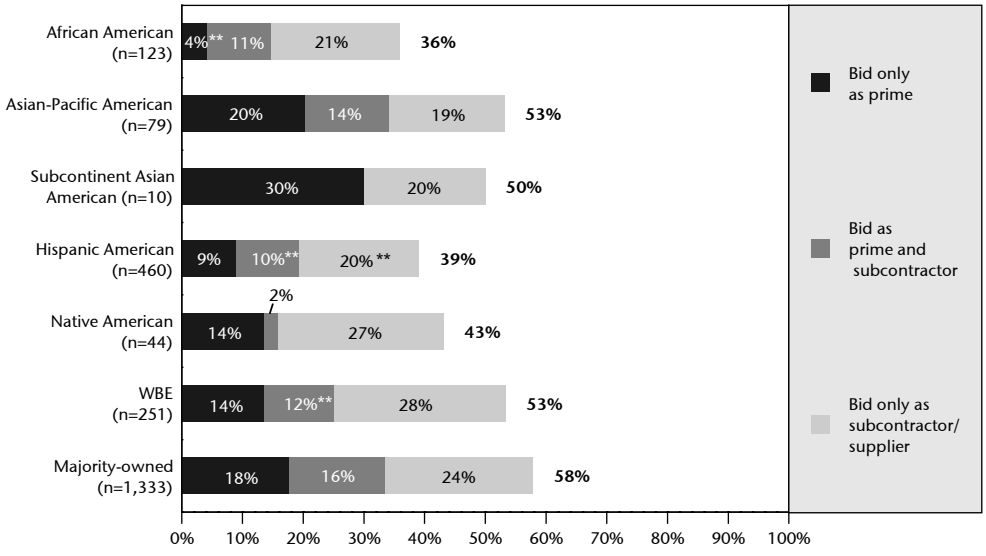
- About 53 percent of WBE and Asian-Pacific American-, 50 percent of Subcontinent Asian American- and 43 percent of Native American-owned firms reported having bid on past government work.

- About 39 percent of Hispanic American- and 36 percent of African American-owned firms reported bidding on past public sector work.

Majority-owned firms were more likely to have bid on prime contracts (34% of firms) and subcontracts (40%) relative to minority-owned firms. About 34 percent of Asian Pacific American-owned firms and 30 percent of Subcontinent Asian American-owned firms had bid on a prime contract. Other groups of minority-owned firms were less likely to have bid on a government contract as a prime. No group of minority-owned firms were as likely to have bid on a government subcontract as majority-owned firms.

The proportion of WBE and Asian-Pacific American-owned firms bidding on past government projects (53%) was relatively close to the proportion for majority-owned firms.

**Figure I-30.**
**Percent of available transportation construction industry firms that reported submitting a bid for any part of a government project in the past 5 years**




Note: WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

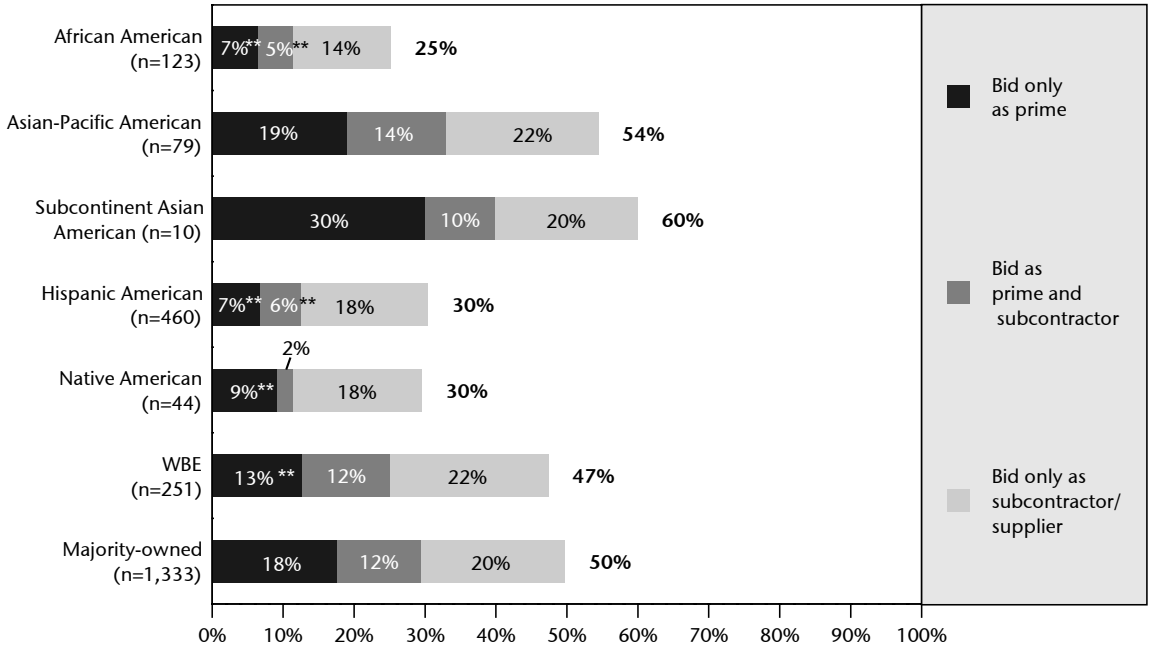
Source: BBC Research & Consulting from the 2006 and 2008 Availability Surveys.

**Transportation construction industry firms' past bidding on private sector work.** Telephone interviewers also asked firm owners and managers if the firm had bid on a private sector transportation project in the past five years. Except for Subcontinent Asian American- and Asian-Pacific American-owned businesses, each group of transportation industry firms was less likely to have bid on private sector work than on government work.

Asian-Pacific American- and Subcontinent Asian American-owned firms were more likely to have bid on private sector work than majority-owned firms.

Only 12 percent of African American-owned transportation construction industry businesses reported bidding on private sector work as a prime and only 19 percent indicated bidding as a subcontractor. African American-owned firms were more likely to have bid as primes or subs on government projects. Figure I-31 presents these results.

**Figure I-31.**
**Percent of available transportation construction industry firms that reported submitting a bid for any part of a private sector project in the past 5 years**




Note: WBE is white women-owned firms.
** Statistically significant difference from majority-owned firms at the 95% confidence level.

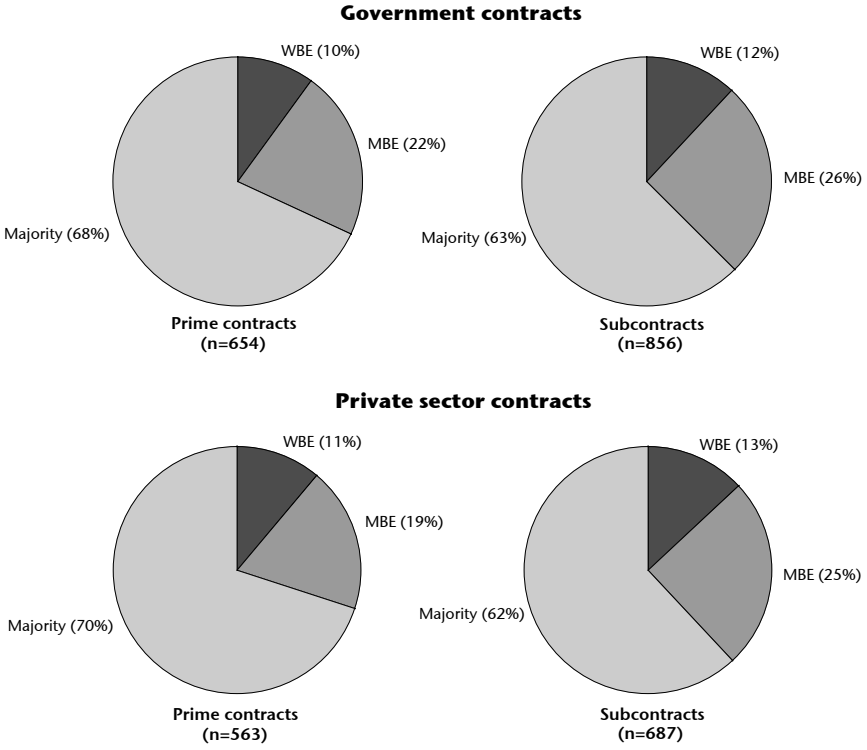
Source: BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Summary of transportation construction firm competition for government and private sector work.** The pie charts in Figure I-32 examine the relative share of all firms competing for government and private sector prime contracts and subcontracts based on responses from firms in the 2006 and 2008 Availability Survey.

Of the 654 transportation construction industry firms in the Availability Survey that reported bidding on public sector prime contracts in the past five years, 68 percent are majority-owned, 22 percent are MBEs and 10 percent are WBEs. The share of firms bidding as primes that are MBE/WBEs slightly decreases for private sector work.

Among the 856 firms in the Availability Survey competing for public sector subcontracts, 63 percent of the firms are majority-owned. MBE/WBE share of firms bidding on this subcontract work varies little between government contracts and private sector contracts.

**Figure I-32.**
**MBE and WBE share of transportation construction industry firms bidding on different types of work in California in the past 5 years**




Note: WBE is white women-owned firms.
Total may not add to 100 percent due to rounding.

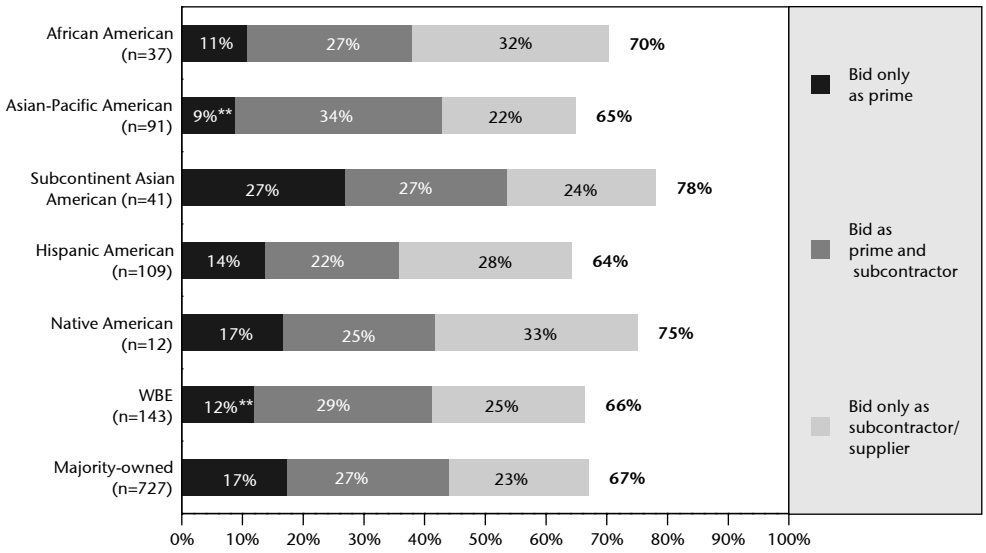
Source: BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Transportation engineering industry firms' past bidding on government work.** Transportation engineering industry firms are more likely to have bid on past government projects as a prime consultant or subcontractor than transportation construction industry firms. As shown in Figure I-33, among majority-owned firms, 67 percent had submitted proposals as a prime or subcontractor on public sector projects in the past five years. About the same share of African American- and Asian-Pacific American-owned transportation engineering industry firms had proposed as a prime or subcontractor on past government projects.

Results for WBEs were similar to majority-owned firms, except that WBEs were more likely to have bid as subcontractors (54% compared with 50% of majority-owned firms).

This pattern is evident for minority-owned firms as well, with the exception of Subcontinent Asian American-owned firms. Most groups of firms were about as likely to have proposed on past government projects as majority-owned firms, but a greater proportion attempted to participate as a subcontractor.

**Figure I-33.**
**Percent of available transportation engineering industry firms that reported submitting a bid for any part of a government project in the past 5 years**




Note: WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

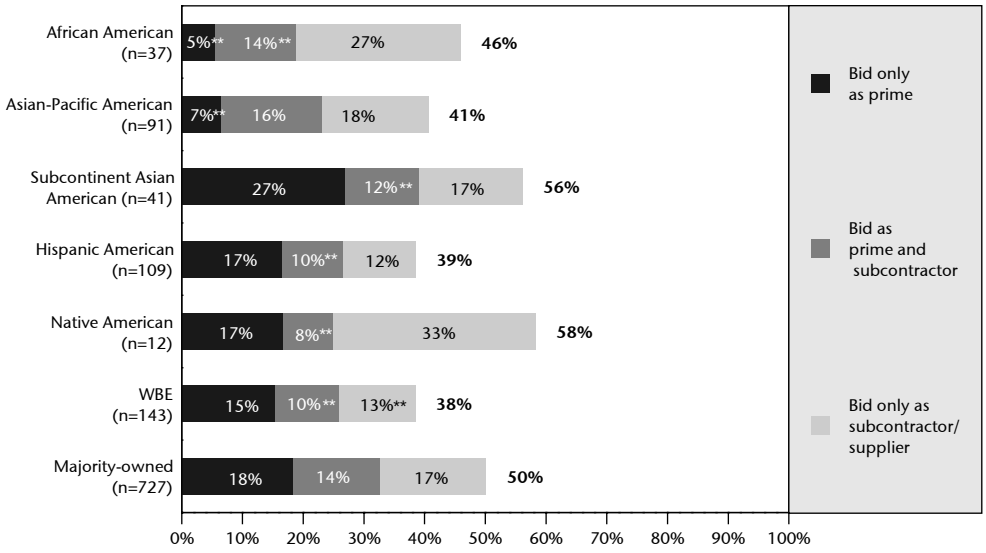
Source: BBC Research & Consulting from the 2006 and 2008 Availability Surveys.

**Transportation engineering industry firms' past bidding on private sector work.** One-half of majority-owned transportation engineering industry firms had proposed as prime or subcontractors on private sector work in the past five years. This was higher than MBEs and WBEs, except for Native American- and Subcontinent Asian American-owned firms:

- For most groups, MBEs were somewhat less likely as majority-owned firms to have bid as prime contractors.
- WBEs were less likely to bid as subcontractors than majority-owned firms (23% versus 31%);
- Fewer MBEs and WBEs had competed for private sector prime contracts compared with majority-owned firms (with the exception of firms owned by Subcontinent Asian Americans).

Figure I-34 examines this information.

**Figure I-34.**
**Percent of available transportation engineering industry firms that reported submitting a bid for any part of a private sector project in the past 5 years**




Note: WBE is white women-owned firms.
** Statistically significant difference from majority-owned firms at the 95% confidence level.

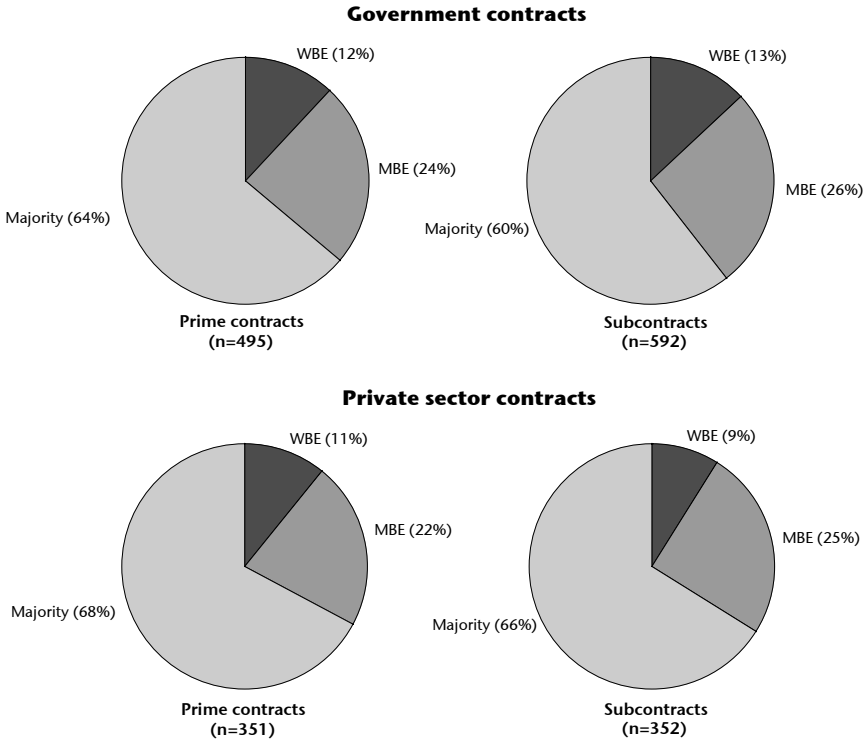
Source: BBC Research & Consulting from the 2006 and 2008 Availability Surveys.

**Summary of transportation engineering firm competition for government and private sector work.** As with transportation construction firms, the study team analyzed the relative share of engineering industry firms competing for public and private sector prime contracts and subcontracts. These results are based on counts of firms reporting that they compete for each type of work in the Availability Survey.

As shown in Figure I-35, MBE/WBEs comprise a larger share of transportation engineering industry firms competing for public sector prime contracting work than firms competing for private sector prime contracting work (36% for the public sector versus 33% in the private sector).

MBE/WBEs comprised 39 percent of firms pursing government subcontracts, much more than MBE/WBE representation among firms seeking subcontracts in the private sector (34%).

**Figure I-35.**
**MBE and WBE share of transportation engineering industry firms proposing on different types of work in California in the past five years**

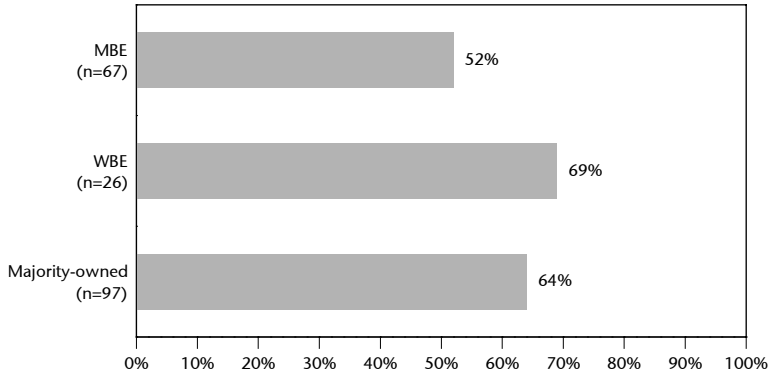



Note: WBE is white women-owned firms.
Total may not add to 100 percent due to rounding.

Source: BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Transportation goods and services industry firms' past bidding on government work.** Transportation goods and services industry firms are more likely to have bid on past public sector projects as a prime consultant or subcontractor than transportation construction industry firms. As shown in Figure I-36, among majority-owned firms, 64 percent had submitted proposals or bids to government agencies in the past five years. Only 52 percent of minority-owned transportation engineering industry firms had proposed as a prime or subcontractor on past government projects. Results for WBEs were similar to majority owned firms.

**Figure I-36.**
**Percent of available transportation goods and services industry firms that reported submitting a bid for any part of a government project in the past *5* years**

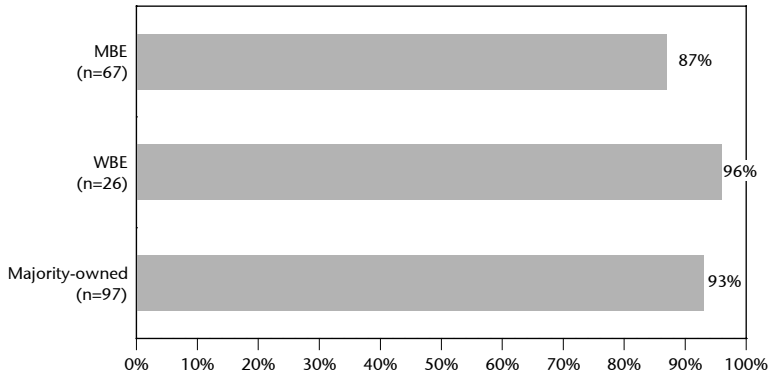



Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Transportation goods and services industry firms' past bidding on private sector work.** Nearly all of majority-owned transportation goods and services industry firms had submitted bids or price quotes for private sector work in the past five years. Figure I-37 presents this information.

**Figure I-37.**
**Percent of available transportation goods and services industry firms that reported submitting a bid for any part of a private sector project in the past *5* years**




Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

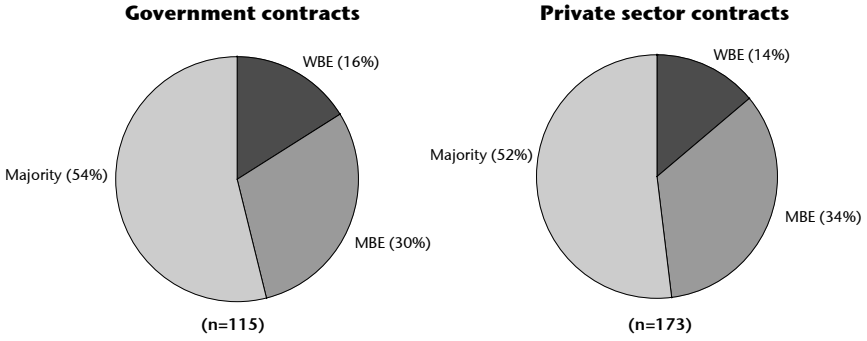
Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Summary of transportation goods and services firm competition for government and private sector work.** As with transportation construction and engineering firms, the study team analyzed the relative share of goods and services industry firms competing for public or private sector contracts. These results are based on counts of firms reporting that they compete for each type of work in the Availability Survey.

As shown in Figure I-38, the share of MBE/WBE transportation goods and services industry firms competing for public sector work is similar to the share competing for private sector work (46% for the public sector versus 48% in the private sector).

MBE/WBEs represented a higher proportion of firms in the transportation goods and services industry than for either transportation construction or engineering.

**Figure I-38.**
**MBE and WBE share of transportation goods and services industry firms proposing on different types of work in California in the past five years**




Note: WBE is white women-owned firms.
Total may not add to 100 percent due to rounding.

Source: BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Relative success of firms in pursuing government and private sector work.** Only a portion of the firms reporting bidding on different types of work were successful in obtaining that work. For example, 81 percent of majority-owned transportation construction industry firms that indicated bidding on government work reported being awarded some part of a public sector contract in the past five years. A similar share of majority-owned transportation construction firms that pursued private sector work were successful in receiving that work (80% of bidders obtained a contract or subcontract).

These statistics for overall "bidding success rates" combine firms bidding as prime contractors, subcontractors, suppliers and truckers (and combines awards by type). Figures I-39 and I-40 compare success rates of minority-, women- and majority-owned firms in the transportation construction industry when pursuing government and private sector work. Figures I-41 and I-42 examine results for the transportation engineering industry. Bid success rates for the transportation goods and services industry are presented in Figures I-43 and I-44.

**Government transportation construction work.** Figure I-39 examines the bidding success rates of transportation construction industry firms pursuing any part of a government contract. As shown, more than 70 percent of Asian-Pacific American- and Hispanic American-owned firms that reported bidding or submitting price quotes on government work (as primes, subs, suppliers, truckers) were successful in obtaining at least one contract or subcontract over the prior five years.

While only 40 percent of Subcontinent Asian American-owned firms that bid on government work were successful in obtaining such work, this is based on a relatively small number of responses (only 5 firms). WBEs had a lower success rate than majority-owned firms when pursuing government work.

**Figure I-39.**
**Success rate of transportation construction firms bidding on government work**

Note:

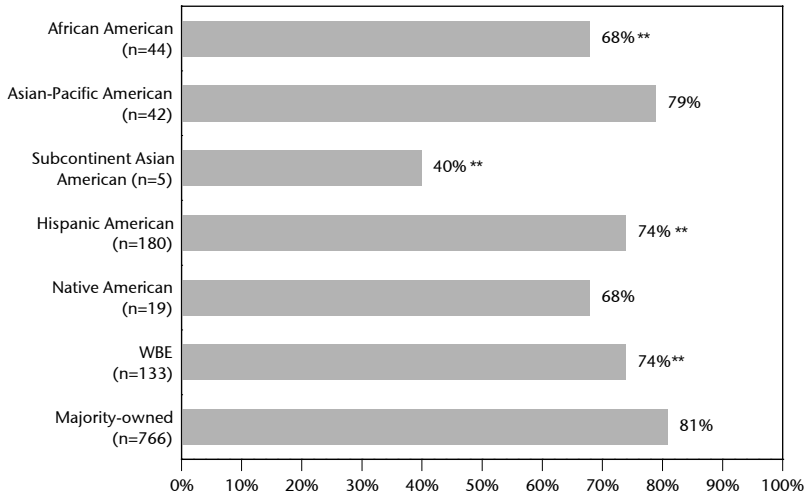
Success rate is the percentage of firms bidding on work in the past five years that received contracts or subcontract.

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.



**Private sector transportation construction work.** When bidding on private sector work, 80 percent of majority-owned transportation construction industry firms were successful in receiving some work from this sector. The success rate of WBEs was similar.

Some MBE race/ethnicity groups pursuing private sector work were not as successful as majority-owned firms based on the survey responses:

- Only 58 percent of Asian-Pacific American-owned transportation construction industry firms seeking bidding on private sector work had received contracts or subcontracts, a large disparity. (This result is statistically significant.)

- About 71 percent of Hispanic American-owned firms bidding on private sector work had obtained contracts or subcontracts.

These findings are summarized in Figure I-40.

**Figure I-40.**
**Success rate of transportation construction firms bidding on private sector work**

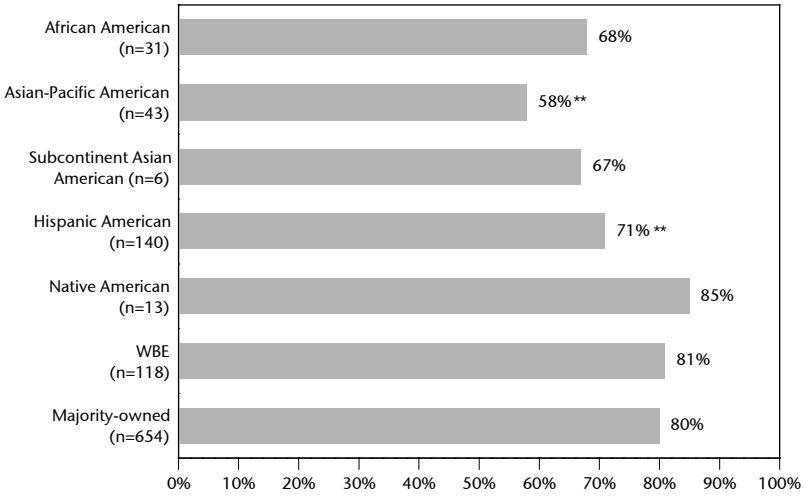
Note:

WBE is white women-owned firms.

** Statistically significant at the 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.



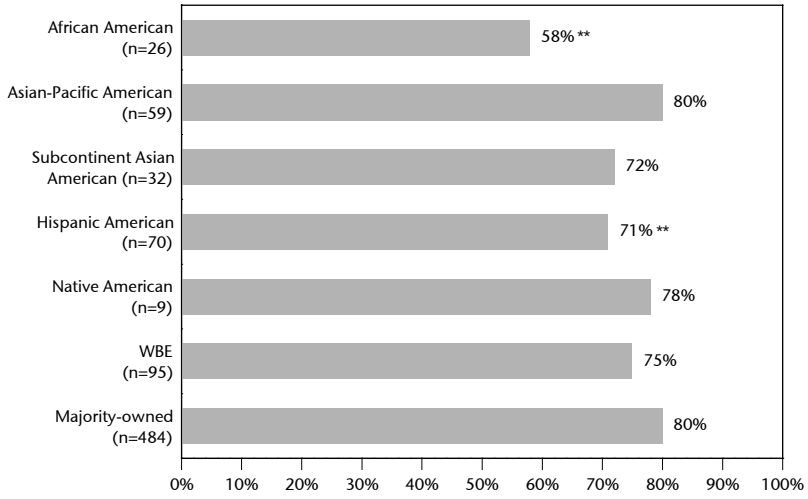
**Government transportation engineering work.** The study team performed similar analyses for transportation engineering industry firms responding to the Availability Survey. Figure I-41 examines the success rate of transportation engineering industry firms in obtaining government work as prime consultants or subcontractors.

About 80 percent of majority-owned firms seeking government prime contracts or subcontracts were successful in obtaining some government work over the past five years. Asian-Pacific American- and Native American-owned firms had a similar rate of success pursuing government engineering work (80% and 78%, respectively). African-American-owned firms were less successful than all other groups in winning government work (58%).

**Figure I-41.**
**Success rate of transportation engineering firms bidding on government work**

Note:
WBE is white women-owned firms.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



**Private sector transportation engineering work.** More than three-quarters of majority-owned transportation engineering industry firms that had bid on any private sector work (including subcontracts) were successful in receiving some work from this sector.

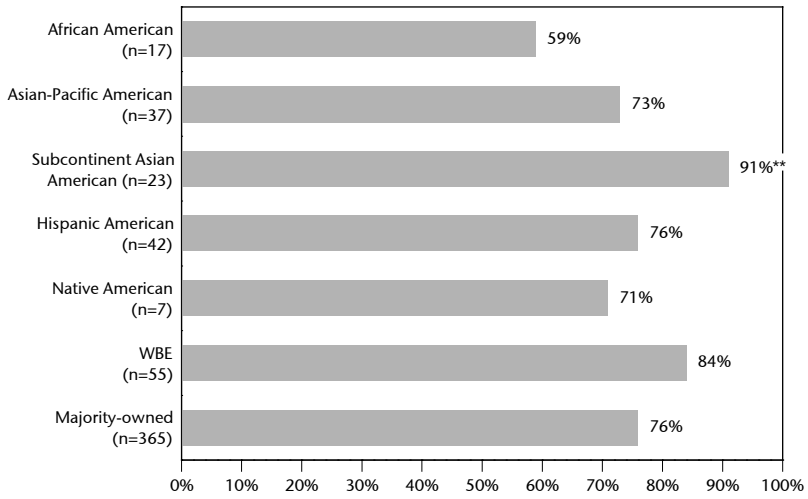
Relatively fewer African American-owned transportation engineering industry firms were successful when seeking this work (59%). This is a large disparity, but is not statistically significant and is based on a relatively small number of African American-owned firms that had sought private sector work (17 firms).

As shown in Figure I-42, other minority-owned firms and WBEs that had proposed on private sector work had similar success rates as majority-owned firms. More Subcontinent Asian American-owned firms reported successfully bidding on private contracts than other MBEs, WBEs or majority owned firms.

**Figure I-42.**
**Success rate of transportation engineering firms bidding on private sector work**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



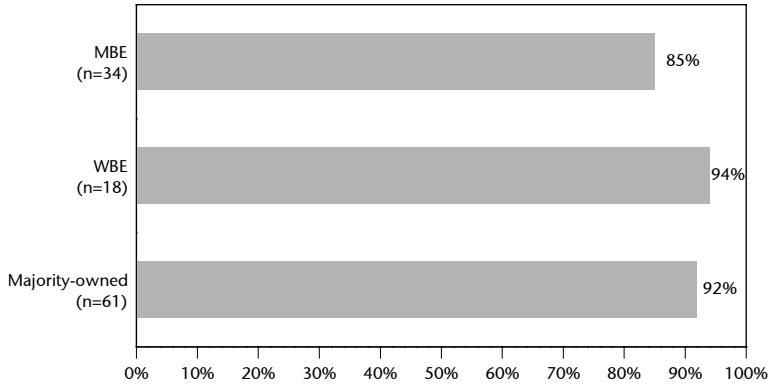
**Government transportation goods and services work.** The study team performed similar analyses for transportation goods and services industry firms responding to the Availability Survey. Figure I-43 examines the success rate of transportation goods and services industry firms in obtaining government work as prime consultants or subcontractors.

About 92 percent of majority-owned firms seeking government contracts were successful in obtaining some government work in the five years prior to being surveyed. MBEs and WBEs had similar rates of success pursuing government goods and services work (85% and 94%, respectively).

**Figure I-43.**
**Success rate of transportation goods and services firms bidding on government work**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



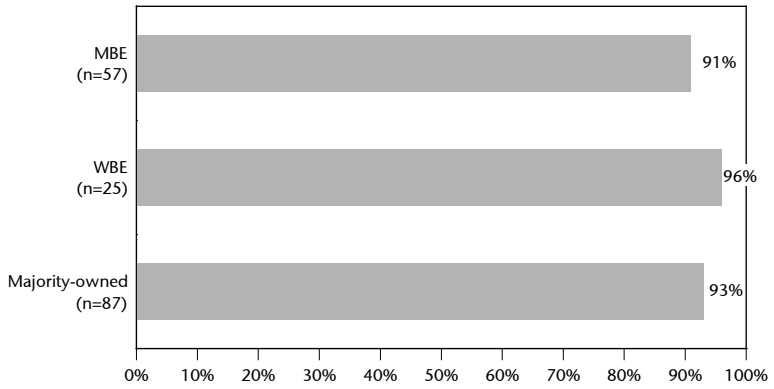

**Private sector transportation goods and services work.** More than 90 percent of majority-owned transportation engineering industry firms that had bid on any private sector work (including subcontracts) were successful in receiving some work from this sector. MBEs and WBEs reported similar success in securing private sector work.

These findings are presented in Figure I-44.

**Figure I-44.**
**Success rate of transportation goods and services firms bidding on private sector work**

Note:
WBE is white women-owned firms.
** Statistically significant at the 95% confidence level.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.



**Summary.** Certain groups of minority- and women-owned firms appear to have different market opportunities and business outcomes compared with majority-owned firms. Major findings include:

- A low share of African American-owned firms in the transportation engineering industry that have bid on government and private sector work have been successful in obtaining work.

- Across all transportation contracting subindustries (construction, engineering and goods and services) relatively few MBE/WBEs have been awarded large contracts or subcontracts (contracts or subcontracts of $5 million or more).

- In the transportation contracting industry, African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and white women-owned businesses have lower annual revenue than majority-owned firms.

**Bid capacity.** Some recent legal cases regarding race-conscious programs have considered the issue of the "relative capacity" of firms included in the availability analysis.[17] One approach to controlling for differing relative capacity is to examine relatively small contracts, a technique noted in *Rothe*. In addition to examining small contracts, BBC directly measured bid capacity in the availability analysis.

**Measurement of bid capacity.** "Bid capacity" for a firm is measured as the largest transportation-related contract or subcontract the firm bid on or performed in California within the five years preceding when BBC interviewed the firm. BBC uses bid capacity as one factor in determining whether a firm would be available to bid on specific prime contracts and subcontracts.

**Assessment of possible disparities in bid capacity of MBE/WBEs and majority-owned firms.** The study team asked firms responding to the Availability Survey to identify the largest transportation-related contract the company was awarded in California in the past five years. Relatively more majority-owned construction firms have received contracts or subcontracts of at least $5 million compared with MBEs and WBEs (see Figures I-27, I-28 and I-29 for more detailed information by subindustry).

The survey effort produced a database of 2,480 firms potentially available for Consortium work.[18] The following analysis of bid capacity relies on the results of the Availability Survey.

One of the factors that affect bid capacity is the industry specialization of construction and engineering firms. Some industry segments, such as construction of water, sewer and utility lines, involve larger projects. Other segments, such as landscape architecture and surveying and mapmaking, involve smaller scale assignments. One way of controlling for variation in bid capacities in different sub-industries is to assess whether or not a firm has a bid capacity above or below the median level for firms in that sub-industry. BBC can then test whether minority- and women-owned firms bid on larger or smaller contracts or subcontracts compared with other firms in their sub-industry.

[17] See, for example, the decision of the United States Court of appeals for the Federal Circuit in *Rothe Development Corp. v. U.S. Department of Defense* F.3d 2008 WL 4779586 (C.A. Fe. (Tex.))

[18] See Appendix D for further description of the survey sample and process.

Figure I-45 indicates the median bid capacity among Southern California-based establishments in each of the 32 industry segments within the construction, engineering and goods and services subindustries. Note that the survey questions regarding the largest project that firms had bid on or been awarded captured data in dollar ranges rather than specific dollar amounts.

**Figure I-45.**
**Median bid capacity by industry segment**

| Industry segment | Median bid capacity |
|---|---|
| Asphalt/paving mixtures | $100,000 or less |
| Building construction | $2 million to $5 million |
| Cleaning and janitorial services | $100,000 or less |
| Communications equipment | $100,000 or less |
| Concrete and related products | Over $100,000 to $500,000 |
| Construction management | Over $500,000 to $1 million |
| Electrical work | Over $100,000 to $500,000 |
| Elevator installation and repair | Over $500,000 to $1 million |
| Engineering | Over $100,000 to $500,000 |
| Environmental and transportation planning | Over $100,000 to $500,000 |
| Excavation | Over $100,000 to $500,000 |
| Heavy construction | Over $100,000 to $500,000 |
| Heavy construction equipment rental | Over $100,000 to $500,000 |
| Industrial equipment and machinery | $100,000 or less |
| Industrial hydraulic equipment | $100,000 |
| Landscape architecture | $100,000 or less |
| Other building construction | Over $500,000 to $1 million |
| Other construction materials | $100,000 or less |
| Other construction services | Over $500,000 to $1 million |
| Other heavy construction | $500,000 |
| Petroleum products | Over $100,000 to $500,000 |
| Railroad construction | $5 million |
| Security services | $100,000 or less |
| Structural steel | Over $100,000 to $500,000 |
| Surveying and mapmaking | $100,000 or less |
| Testing services | $100,000 or less |
| Ticket counting and fare collection | More than $20 million |
| Transportation signaling | Over $500,000 to $1 million |
| Trucking | $100,000 or less |
| Vehicle body repair | $100,000 or less |
| Water, sewer, and utility lines | Over $500,000 to $1 million |
| Wrecking and demolition | Over $100,000 to $500,000 |

Source: BBC Research & Consulting from 2006 and 2008 Availability Surveys.

Firms with bid capacities above the median for their industry segments are counted as available for larger Consortium agency projects than most of the firms in their line of business (as well counted as available for smaller assignments). Thus, these firms figure more prominently in the availability analysis than firms with smaller bid capacities. An initial question is whether or not minority and women-owned firms are as likely as majority owned firms to have above-median bid capacity for their industry segment. Figure I-46 compares the proportions of firms with above-median bid capacity by ownership.

**Figure I-46.**
**Proportion of firms with above-median bid capacity by ownership**

Note:
WBE is white women-owned firms.

Source:
BBC Research & Consulting from 2006 and 2008 Availability Surveys.

| | Proportion with above-median bid capacity | | |
|---|---|---|---|
| Firm ownership | Construction | Engineering | Goods and Services |
| African American | 39.3% | 30.0% | 37.5% |
| Asian-Pacific American | 33.9% | 29.9% | 0.0% |
| Subcontinent Asian American | 22.2% | 36.4% | 0.0% |
| Hispanic American | 37.3% | 36.5% | 30.8% |
| Native American | 36.0% | 18.2% | 100.0% |
| Female | 39.0% | 50.0% | 36.1% |
| Majority-owned | 42.5% | 35.9% | 37.7% |
| **All firms** | **40.9%** | **35.2%** | **34.5%** |

**Construction.** The results shown in Figure I-46 indicate that, in aggregate, relatively fewer minority and women-owned construction firms have above-median bid capacity for their subindustry compared with firms owned by non-Hispanic, white males.

**Engineering.** For the engineering industry, the proportion of firms with above-median bid capacity is the same for Subcontinent Asian American-, and Hispanic American-owned firms as for majority-owned firms. A greater number of WBEs reported above-median bid capacity than majority firms and fewer African American-, Asian-Pacific American-, and Native American-owned firms reported an above-median bid capacity.

**Goods and services.** The proportion of firms in goods and services with above-median bid capacity was similar for majority-, women-, and African American-owned firms. A lower proportion of Asian-Pacific American-, Subcontinent Asian American-, and Hispanic American-owned firms reported above-median bid capacity.

BBC then considered whether neutral factors account for differences among groups in the probability of having above-median bid capacity and if there are statistically significant disparities in bid capacity after accounting for neutral factors.

There are a number of variables from the Availability Survey that may be correlated with bid capacity. Annual revenues, number of employees and, potentially, whether or not a firm has multiple establishments in California, are examples. However, the direction of causation for these variables is unclear. Do firms have greater bid capacity because they have more employees, or do they have more employees because they bid on and win larger assignments?

After considering the array of variables from the Availability Survey, the study team determined that the neutral factor that might best explain differences in bid capacity (within a subindustry) while being truly exogenous to that capacity was age of the firm. Theoretically, the longer firms are in business, the larger the contract or subcontract they might pursue.

To test this hypothesis, the study team conducted separate logistic regression analyses for the construction, engineering, and goods and services industries to determine whether or not bid capacity could be at least partly explained by the age of the firm and whether or not minority- and women-owned firms differ from majority-owned firms of similar ages (after controlling for subindustry).

**Bid capacity results for the Southern California construction industry.** Results for the Southern California construction industry are shown in Figure I-47. The logistic regression model indicates:

- The age of the firm is a significant predictor of having above-median bid capacity; and
- Any remaining negative differences in the likelihood of having above-median bid capacity for minority and women-owned firms were not statistically significant.

**Figure I-47. California construction industry bid capacity model**

| Variable | Coefficient | Wald-statistic |
|---|---|---|
| Constant | -0.76 | 50.64 ** |
| Age of firm | 0.02 | 29.54 ** |
| African American | -0.07 | 0.07 |
| Asian Pacific American | -0.11 | 0.15 |
| Subcontinent Asian American | -0.83 | 1.06 |
| Hispanic American | -0.08 | 0.27 |
| Native American | -0.13 | 0.09 |
| Female | 0.02 | 0.01 |

Note:

WBE is white women-owned firms.

**Significant at 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.

**Bid capacity results for the Southern California engineering industry.** Results for the Southern California engineering industry are shown in Figure I-48, below. The logistic regression model for this industry indicates:

- The age of the firm is a significant predictor of having above-average bid capacity for engineering as well as construction;
- Any remaining negative differences in the likelihood of having above-average bid capacity for minority-owned firms were not statistically significant; and
- Engineering firms owned by women are significantly more likely to have above-average bid capacity than other firms in their sub-industries.

**Figure I-48. California engineering industry bid capacity model**

Note:

WBE is white women-owned firms.

**Significant at 95% confidence level.

Source:

BBC Research & Consulting from 2006 and 2008 Availability Surveys.

| Variable | Coefficient | Wald-statistic |
|---|---|---|
| Constant | -1.17 | 69.84 ** |
| Age of firm | 0.02 | 25.63 ** |
| African American | -0.01 | 0.00 |
| Asian Pacific American | -0.14 | 0.24 |
| Subcontinent Asian American | 0.14 | 0.13 |
| Hispanic American | 0.11 | 0.16 |
| Native American | -0.69 | 0.76 |
| Female | 0.77 | 5.38 ** |

**Bid capacity results for the California other goods and services industry.** The study team also performed a logistic regression for the goods and services industry. This regression showed no statistically significant evidence of discrimination. This result may have occurred due to the small sample size (142 firms were included in the regression).

## Summary of Business Success in the Transportation Contracting Industries

Results from the analyses conducted in Appendix I include the following:

- Data from the U.S. Bureau of the Census 2002 Survey of Business Owners indicate that 2002 receipts were lower for African American-, Asian American-, Hispanic American-, Native American- and women-owned firms compared with all firms in Southern California.

- Analysis of the 2000 U.S. Census of Population shows that construction business owner earnings for African Americans, Asian-Pacific Americans and Hispanic Americans were lower than earning for non-Hispanic whites in Southern California. Female owners earned less than men who owned construction businesses. U.S. Bureau of the Census data for 2007 reveal similar disparities for minorities. However, earnings for female construction business owners were higher than men in that year.

- Similar analyses for the owners of engineering firms in Southern California found lower earnings for minority and female business owners than non-Hispanic white male business owners (data from the 2000 Census of Population and the 2007 American Community Survey are consistent).

- Regression analyses using 2000 U.S. Bureau of the Census data for Southern California show statistically significant disparities for Hispanic American and female business owners in the construction industry. Hispanic business owners had earnings that were about 74 percent of the average for similarly situated non-Hispanic white male owners. Female business owners earned about one-half of the average for males, after controlling for a number of other factors. The regression analysis suggests the possibility of disparities for African American, Asian-Pacific American and Native American business owners, but these results were not statistically significant (perhaps due to small sample sizes in some cases).

- Regression analyses for Southern California engineering business owners indicate evidence of disparities for female business owners. Earnings of Native American business owners exceeded non-Hispanic whites after controlling for other factors.

- Analysis of revenue data collected as part of BBC's availability interviews in Southern California indicated the following:

  - Lower annual revenue for African American-,Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned construction firms;

  - Lower annual revenue for African American-,Asian-Pacific American-, Subcontinent Asian American-, Hispanic American-, Native American- and women-owned firms compared with majority-owned engineering and related firms; and

  - Lower annual revenue for minority- and women-owned goods and services firms compared with majority-owned firms.

- Data from the availability interviews also suggest that:

  - African American-, Hispanic American- and Native American-owned construction firms were considerably less likely to have bid on any part of a government contract (within the previous 5 years). Minority- and women-owned engineering firms were also less likely to have bid on any part of a public sector contract.

  - Among construction firms that had attempted to obtain public sector work, firms owned by African Americans, Subcontinent Asian Americans, Hispanic Americans and women were less likely to have been successful in receiving a contract or subcontract than majority-owned firms. Similar disparities were found for African American- and Hispanic-owned engineering firms.

- The availability interviews collected data on the largest contract or subcontract a firm had performed or bid on the previous five years. This statistic is referred to as "bid capacity" in this report. Results for Southern California include the following:

  - MBE/WBEs were less likely than majority-owned firms to have received large contracts or subcontracts.

  - When BBC conducted regression analyses to further explore these differences, firm specialization and age were important in explaining whether a firm had "high bid capacity." BBC did not identify statistically significant differences for minority- or women-owned firms in the construction industry.

  - Women-owned engineering firms appeared to have higher bid capacity after controlling for other factors. There were no statistically significant disparities for minority-owned engineering firms.

# APPENDIX J.
# Description of Data Sources

# APPENDIX J.
# Description of Data Sources

To perform the analyses in Appendices C through F, BBC used data from a range of sources, including U.S. Census Bureau's Public Use Micro-samples (PUMS) from the 1980 and 2000 Census and the Census Bureau's American Community Survey (ACS) for 2007. BBC also analyzed data from the Federal Reserve Board's 1998 and 2003 Survey of Small Businesses.

## PUMS Data

The study team used PUMS data to analyze:

- Demographic characteristics of workers in construction and engineering, including related occupations;
- Educational attainment; and
- Self-employment (business ownership).

PUMS data offer several features ideal to the analyses reported in this study, including historical cross-sectional data, stratified national and state-level samples, and large sample sizes that enable many estimates to be made with a high level of statistical confidence, even for subsets of the population (e.g., ethnic and occupational groups).

BBC obtained selected Census and ACS data via the Minnesota Population Center's Integrated Public Use Micro-data Series (IPUMS). The IPUMS program provides access to customized, accurate data extracts. These data are available at the IPUMS website.[1] For the analyses contained in this report, BBC used the 1980 and 2000 Census 5 percent sample and the 2007 ACS datasets.

The ACS is conducted by the U.S. Census Bureau and uses monthly samples to produce annually updated data for the same small areas as the decennial census long-form.[2] Since 2005, the ACS has expanded to a roughly 1 percent sample of the population, based on a random sample of housing units in every county in the U.S. (along with the District of Columbia and Puerto Rico).

**Data for 2000.** The 2000 U.S. Census 5 percent sample contains 14,081,466 observations. Applying the Census person-level population weights, this sample represents 281,421,906 people in the United States. The 2000 Southern California sub-sample which includes Los Angeles County, Orange County, Riverside County, San Bernardino County, San Diego County and Ventura County contains 626,056 individual observations, weighted to represent 12,922,119 people in this area of the

[1] Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. *Integrated Public Use Microdata Series: Version 3.0* [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2004. http://usa.ipums.org/usa/

[2] U.S. Census Bureau. *Design and Methodology - American Community Survey*. U.S. Government Printing Office, Washington D.C., May 2006. Available at http://www.census.gov/acs/www/Downloads/tp67.pdf

state. The 2000 sample for San Diego County contains 88,691 individual observations, representing 1,865,920 people in the county.

**Categorizing individual race/ethnicity.** To define race/ethnicity for the 2000 Census dataset, BBC used the detailed IPUMS race/ethnicity variables (RACED and HISPAND) to categorize individuals into one of seven groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian-Pacific American;
- Subcontinent Asian American;
- Native American; and
- Other minority (unspecified).

An individual is considered "non-Hispanic white" if they are not Hispanic and are not in combination with any other race group. Any self-identified Hispanic individuals are considered Hispanic American, regardless of any other race group identification.

For the five other racial groups, an individual's race/ethnicity is categorized by the first (or only) race group identified in each possible race-type combination. BBC uses a rank ordering methodology which complements the 2000 Census data dictionary rank ordering. African American is first, followed by Native American, then Asian-Pacific American and finally Subcontinent Asian American. For example, if an individual identified "Korean," this person belongs in the Asian-Pacific American category, whereas, if the individual identified "Korean" in combination with "Black," the individual is considered African American. Hispanic identification overrules any other race group identification.

- The Asian-Pacific American category includes the following race/ethnic groups: Cambodian, Chamorro, Chinese, Filipino, Guamanian, Hmong, Indonesian, Japanese, Korean, Laotian, Malaysian, Samoan, Taiwanese, Thai, Tongan, and Vietnamese. This category also includes other Polynesian, Melanesian and Micronesian races as well as individuals identified as Pacific Islanders.

- The Subcontinent Asian American category includes these race groups: Asian Indian (Hindu), Bangladeshi, Pakistani, and Sri Lankan. Any individuals identified as "Asian," but not clearly categorized as Asian-Pacific versus Subcontinent Asian, are put into the Asian-Pacific group. (Overall, nine in ten Asians counted in the 2000 Census in California were Asian-Pacific Americans.)

- American Indian, Alaskan Native, Hawaiian and Latin American Indian groups are considered Native American.

- If an individual is identified with any of the above groups and an "other race" group, the individual is categorized into the known category. Individuals identified as "other race" or "white and other race" are categorized as "other minority."

One exception to the rules listed above pertains to individuals who are Asian-Pacific American in combination with Hawaiian. An individual identified as Hawaiian alone is considered Native American. Individuals who are a combination of Native American and Asian-Pacific are considered Native American in all cases except those identified as Hawaiian Native Americans. These individuals are considered primarily Asian-Pacific.

**Business ownership.** BBC uses the Census "class of worker" variable (CLASSWKD) to determine self-employment. Individuals are classified into eight categories:

- Self-employed for a non-incorporated business;
- Self-employed for an incorporated business;
- Wage or salary employee for a private firm;
- Wage or salary employee for a non-profit organization;
- Employee of the Federal government;
- Employee of a State government;
- Employee of a local government; or
- Unpaid family worker.

BBC included individuals who reported self-employment, either for an incorporated or a non-incorporated business, as business owners.

**Defining selected industry sectors.** The construction sector is defined using the 2000 Census code for the industry, 077, which is equivalent to the 1997 NAICS code 23. The Architectural, Engineering and Related Services industry is Census code 729; corresponding to 1997 NAICS code 5413.

**Relevant engineering occupational titles.** When referring to engineering as an occupation, BBC included civil (136), environmental (142) and mining and geological engineers (150). The Census codes for these occupational titles (in parentheses) tie to Standard Occupational Classification (SOC) codes 17-2051, 17-2081 and 17-2151, respectively.

**Education variables.** BBC used the variable denoting the highest level of educational attainment (EDUC99) to classify individuals into the following four categories: less than high school, high school diploma, some college and at least a bachelor's degree.

**Definition of workers.** The universe for the class of worker, industry and occupation variables includes workers aged between 16 and 65 who reported last working within the five years preceding the Census survey.

**1980 Census data.** BBC compared 2000 Census data with data for the 1980 Census to analyze changes in worker demographics, educational attainment and business ownership over time. A number of changes in variables and coding took place between the 1980 and 2000 Censuses.

**Changes in race/ethnicity categories between censuses.** Figure J-1 lists the seven BBC-defined race/ethnic categories with the corresponding 1980 and 2000 Census race groups. A difference between the 1980 and 2000 Census race groups is the availability of combinations of race types. In 2000, the Bureau of the Census introduced categories representing a combination of race types, so that individuals could select multiple races when responding to the 2000 Census questionnaire.

For example, an individual who is primarily white, yet with one quarter of Native American ancestry, could choose the "white and American Indian/Alaska Native" race group in 2000. However, if the same individual must choose a single race, as in prior years, the choice may either be "white" or "American Indian/Alaska Native." The choice depends on unknowable factors including how strongly the individual identifies with his or her Native heritage. In addition, the data analyst does not have information about the proportions of individual ancestry and will only know that the ancestry is mixed. The variability introduced by allowing multiple race selection complicates direct comparisons between race data from the 2000 Census and previous censuses. Even so, 98 percent of survey respondents in 2000 indicated a single race.[3]

[3] Grieco, Elizabeth M. & Rachel C. Cassidy. "Overview of Race and Hispanic Origin," *Census 2000 Brief*, March 2001, page 3.

**Figure J-1.**
**BBC race/ethnic categories compared with Census race and Hispanic Origin survey questions, 1980 and 2000**

| BBC-defined race/ethnic categories | 2000 Census | 1980 Census |
|---|---|---|
| African American | **Hispanic origin:** no<br>**Race:** Black/Negro alone or in combination with any other non-Hispanic group | **Hispanic origin:** no<br>**Race:** Black/Negro |
| Asian-Pacific American | **Hispanic origin:** no<br>**Race:** Chinese, Taiwanese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Hmong, Laotian, Thai, Indonesian, Malaysian, Samoan, Tongan, Polynesian, Guamanian/Chamorro, Pacific Islander, Micronesian, Melanesian, or other Asian, either alone or in combination with any non-Hispanic, non-Black, or non-Native American groups. *Does include Asian-Pacific in combination with Hawaiian.* | **Hispanic origin:** no<br>**Race:** Chinese, Japanese, Filipino, Korean, Vietnamese, Pacific Islander or other Asian |
| Subcontinent Asian American | **Hispanic origin:** no<br>**Race:** Asian Indian, Bangladeshi, Pakistani or Sri Lankan, alone or in combination with white or other groups only | **Hispanic origin:** no<br>**Race:** Asian Indian |
| Hispanic American | **Hispanic origin:** yes<br>**Race:** any race groups, alone or in combination with other groups | **Hispanic origin:** yes<br>**Race:** any<br>or<br>**Hispanic origin:** no<br>**Race:** Spanish |
| Native American | **Hispanic origin:** no<br>**Race:** American Indian or Alaskan Native tribe identified, or Hawaiian, alone or in combination with any non-Hispanic, non-Black group. *Does not include Asian-Pacific in combination with Hawaiian.* | **Hispanic origin:** no<br>**Race:** American Indian/Alaska Native or Hawaiian |
| Other minority group | **Hispanic origin:** no<br>**Race:** other race alone or in combination with white only | **Hispanic origin:** no<br>**Race:** other race |
| Non-Hispanic white | **Hispanic origin:** no<br>**Race:** white alone | **Hispanic origin:** no<br>**Race:** white |

Source: BBC Research & Consulting from the IPUMS program: http://usa.ipums.org/usa/.

**Business ownership.** BBC uses the Census "class of worker" variable (CLASSWKD) to determine self-employment. This variable is the same for 1980 and 2000.

**Changes in industry codes between censuses.** The Construction sector is coded as "077" in the 2000 Census, and "060" in the 1980 Census. The 2000 Census represents the "Architectural, Engineering and Related Services" industry with code "729." In 1980, the code is "882" for "Engineering, Architectural and Surveying Services."

**Changes in occupational codes between censuses.** Occupational titles and codes vary between censuses. BBC made the following adjustments:

- The 1980 Census does not include specific categories for environmental or geological engineers, so these are omitted when comparing populations over time by engineering occupation. Instead, BBC focuses on civil engineers, coded as "136" in 2000, or "53" in 1980.

- Codes for occupations within the construction industry changed between the 1980 and 2000 censuses. Figure J-2 contains the occupational code crosswalk and all job descriptions.

**Changes in educational variables between Censuses.** The 2000 Census uses an educational variable (EDUC99) that denotes the highest level of educational attainment, whereas the 1980 Census uses a variable (HIGRADE) that reports the highest-grade of school attended. In order to compare educational attainment in 1980 and 2000, BBC made the following assumptions:

- An individual who has not completed 12$^{th}$ grade or a GED has less than a high school diploma.

- An individual who completed 12$^{th}$ grade is considered a high school graduate.

- An individual who completed at least 12$^{th}$ grade, but less than completion of four years of college is categorized under "some college."

- An individual who completed at least four years of college is categorized as receiving at least a bachelor's degree.

**Figure J-2.**
**Occupational crosswalk for 1980 and 2000 IPUMS data**

| Census 2000 occupational title and code | Census 1980 occupational title and code | Job description for 2000 titles |
|---|---|---|
| Construction managers<br>22 | Managers and administrators, n.e.c.<br>19 | Plan, direct, coordinate, or budget, usually through subordinate supervisory personnel, activities concerned with the construction and maintenance of structures, facilities, and systems. Participate in the conceptual development of a construction project and oversee its organization, scheduling, and implementation. Include specialized construction fields, such as carpentry or plumbing. Include general superintendents, project managers, and constructors who manage, coordinate, and supervise the construction process. |
| First-line supervisors/managers of construction trades and extraction workers<br>620 | Supervisors (categories separated): brickmasons, stonemasons, and tile setters; carpenters and related workers; electricians and power transmission installers; painters, paperhangers and plasterers; plumbers, pipefitters and steamfitters; n.e.c.; and extractive occupations<br>553-558 & 613 | Directly supervise and coordinate the activities of construction or extraction workers. |
| Brickmasons, blockmasons and stonemasons<br>622 | Brickmasons and stone masons<br>563 | Lay and bind building materials, such as brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, Construct or repair walls, partitions, arches, sewers, and other structures. Build stone structures, such as piers, walls, and abutments and lay walks, curbstones, or special types of masonry for vats, tanks, and floors. |
| Carpenters<br>623 | Carpenters<br>567 | Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms, building frameworks, including partitions, joists, studding, rafters, wood stairways, window and door frames, and hardwood floors. |
| Carpet, floor, and tile installers and finishers<br>624 | Tile setters, hard and soft<br>565 | Apply shock-absorbing, sound-deadening, or decorative coverings to floors. Lay carpet on floors and install padding and trim flooring materials. Scrape and sand wooden floors to smooth surfaces, apply coats of finish. Apply hard tile, marble, wood tile, walls, floors, ceilings, and roof decks. |
| Cement masons, concrete finishers and terrazzo workers<br>625 | Concrete and terrazzo finishers<br>588 | Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs or gutters; patch voids; use saws to cut expansion joints. Terrazzo workers apply a mixture of cement, sand, pigment or marble chips to floors, stairways, and cabinet fixtures. |

**Figure J-2. (continued)**
**Occupational crosswalk for 1980 and 2000 IPUMS data**

| Census 2000 occupational title and code | Census 1980 occupational title and code | Job description for 2000 titles |
|---|---|---|
| Construction laborers<br>626 | Construction laborers<br>869 | Perform tasks involving physical labor at building, highway, and heavy construction projects, tunnel and shaft excavations, and demolition sites. May operate hand and power tools of all types: air hammers, earth tampers, cement mixers, small mechanical hoists, surveying and measuring equipment, and a variety of other equipment and instruments. May clean and prepare sites, dig trenches, set braces to support the sides of excavations, erect scaffolding, clean up rubble and debris, and remove asbestos, lead, and other hazardous waste materials. May assist other craft workers. Exclude construction laborers who primarily assist a particular craft worker, and classify them under "helpers, construction trades." |
| Paving, surfacing and tamping equipment operators<br>630 | Paving, surfacing and tamping equipment operators<br>594 | Operate equipment used for applying concrete, asphalt, or other materials to road beds, parking lots, or airport runways and taxiways, or equipment used for tamping gravel, dirt, or other materials. Include concrete and asphalt paving machine operators, form tampers, tamping machine operators, and stone spreader operators. |
| Miscellaneous construction equipment operators, including pile-driver operators<br>632 | Grader, dozer and scraper operators<br>855 | Operate one or several types of power construction equipment, such as motor graders, bulldozers, scrapers, compressors, pumps, derricks, shovels, tractors, or front-end loaders to excavate, move, and grade earth, erect structures, or pour concrete or other hard surface pavement. Operate pile drivers mounted on skids, barges, crawler treads, or locomotive cranes to drive pilings for retaining walls, bulkheads, and foundations of structures, such as buildings, bridges, and piers. |
| Drywall installers, ceiling tile installers and tapers<br>633 | Drywall installers<br>573 | Apply plasterboard or other wallboard to ceilings or interior walls of buildings, mount acoustical tiles or blocks, strips, or sheets of shock-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. |
| Electricians<br>635 | Electricians and apprentices<br>575 & 576 | Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with relevant codes. May install or service street lights, intercom systems, or electrical control systems. Exclude "security and fire alarm systems installers." The 2000 category includes electrician apprentices. |
| Glaziers<br>636 | Glaziers<br>589 | Install glass in windows, skylights, store fronts, display cases, building fronts, interior walls, ceilings, and tabletops. |
| Painters, construction and maintenance<br>642 | Painters, construction and maintenance<br>579 | Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. Remove old paint to prepare surfaces prior to painting and mix colors or oils to obtain desired color or consistency. |
| Plasterers and stucco masons<br>646 | Plasterers<br>584 | Apply interior or exterior plaster, cement, stucco, or similar materials and set ornamental plaster. |

**Figure J-2. (continued)**
**Occupational crosswalk for 1980 and 2000 IPUMS data**

| Census 2000 occupational title and code | Census 1980 occupational title and code | Job description for 2000 titles |
|---|---|---|
| Roofers<br>651 | Roofers<br>595 | Cover roofs of structures with shingles, slate, asphalt, aluminum, and wood. Spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures |
| Sheet metal workers<br>652 | Sheet metal duct workers<br>596 | Fabricate, assemble, install, and repair sheet metal products such as ducts, control boxes, drainpipes, and furnace casings. |
| Iron and steel workers, including reinforcing iron and rebar workers<br>653 | Structural metal workers<br>597 | *Iron and steel workers* raise, place, and unite iron or steel girders, columns, and other structural members to form completed structures or structural frameworks. May erect metal storage tanks and assemble prefabricated metal buildings. *Reinforcing iron and rebar workers* position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools. Include rod busters. |
| Helpers, construction trades<br>660 | Helpers, construction trades<br>866 | All construction trades helpers not listed separately. |
| Driver/sales workers and truck drivers<br>913 | Truck drivers (heavy), truck drivers (light) and driver-sales workers<br>804, 805 & 806 | *Driver/sales workers* drive trucks or other vehicles over established routes or within an established territory and sell goods, such as food products, including restaurant take-out items, or pick up and deliver items, such as laundry. May also take orders and collect payments. Include newspaper delivery drivers. *Truck drivers (heavy)* drive a tractor-trailer combination or a truck with a capacity of at least 26,000 GVW, to transport and deliver goods, livestock, or materials in liquid, loose, or packaged form. May be required to unload truck. May require use of automated routing equipment. Requires commercial drivers' license. *Truck drivers (light)* drive a truck or van with a capacity of under 26,000 GVW, primarily to deliver or pick up merchandise or to deliver packages within a specified area. May require use of automatic routing or location software. May load and unload truck. Exclude "couriers and messengers." |
| Crane and tower operators<br>951 | Crane and tower operators<br>849 | Operate mechanical boom and cable or tower and cable equipment to lift and move materials, machines, or products in many directions. Exclude "excavating and loading machine and dragline operators." |
| Dredge, excavating and loading machine operators<br>952 | Excavating and loading machine operators<br>853 | *Dredge operators* operate dredge to remove sand, gravel, or other materials from lakes, rivers, or streams; and to excavate and maintain navigable channels in waterways. *Excavating and loading machine and dragline operators* Operate or tend machinery equipped with scoops, shovels, or buckets, to excavate and load loose materials. *Loading machine operators, underground mining*, Operate underground loading machine to load coal, ore, or rock into shuttle or mine car or onto conveyors. Loading equipment may include power *shovels*, hoisting engines equipped with cable-drawn scraper or scoop, or machines equipped with gathering arms and conveyor. |

Note: All occupational groups include only individuals who work in the construction industry. By definition, this includes workers over the age of 16 who reported last working within five years of the Census survey.

Source: 2000 Census occupational titles and codes at http://usa.ipums.org/usa/volii/00occup.shtml, 1980 codes and titles at http://usa.ipums.org/usa/volii/98occup.shtml, job descriptions from the Bureau of Labor Statistics www.bls.gov.

**2007 ACS data.** BBC also used 2007 ACS data from IPUMS. The 2007 ACS sample contains 2,994,662 observations. Applying the person-level population weights, this sample represents 301,621,159 individuals in the U.S. The 2007 ACS includes 132,355 observations for Southern California, representing 14,378,115 people in this area of the state and 19,038 observations in San Diego County, representing 2,006,273 people in the county.

With the exception of a few minor differences, the variables available for the 2007 ACS dataset are the same as those available for the 2000 Census 5 percent sample.

**Changes in race/ethnicity categories between the 2000 Census and 2007 ACS.** The 2000 Census 5 percent sample and the 2007 ACS PUMS data use essentially the same numerical categories for the detailed race variable (RACED). However, in both the samples, any category that represented fewer than 10,000 people was combined with another category. As a result, some PUMS race/ethnicity categories that occur in one sample may not exist in the other, which could lead to inconsistencies between the two samples once the detailed race/ethnicity categories are aggregated up to the seven broader categories. This issue is unlikely to affect all but a very small number of observations. PUMS categories that were available in 2000 but not 2007 represented 0.07 percent of the 2000 population. Similarly, PUMS categories that were available in 2007 but not in 2000 represented 0.02 percent of the 2007 population. There were no changes in the available categories for the detailed Hispanic variable (HISPAND).

**Other variables.** Other variables used by BBC in its analysis were the same in 2000 and 2007. The variables CLASSWKD, IND, OCC, and EDUC99 were the same in both datasets, with variable codes in each case representing the same categories.

## Survey of Small Business Finances

The study team used the Survey of Small Business Finances (SSBF) to analyze the availability and characteristics of loans among small business enterprises.

The SSBF, conducted every five years by the Federal Reserve Board, collects financial data from non-governmental for-profit firms with fewer than 500 employees. This survey is a nationally representative sample and is structured to allow for analysis of specific geographic regions, industry sectors, and gender and racial groups. This survey is unique in that it provides detailed data on both firm and owner financial characteristics. For the purposes of this report, BBC used the surveys from 1998 and 2003, which are available at the Federal Reserve Board website.[4]

**Data for 1998.** The 1998 SSBF includes information from 3,561 small businesses. This survey and those conducted prior to it, oversampled minority-owned businesses allowing for a more precise analysis of how minority owner status may affect loan and financial outcomes.

[4] The Federal Reserve Board. *Survey of Small Business Finances, 1998* and *Survey of Small Business Finances, 2003*, obtained from http://www.federalreserve.gov/pubs/oss/oss3/ssbf98/ssbf98home.html and http://www.federalreserve.gov/pubs/oss/oss3/ssbf03/ssbf03home.html respectively.

**Categorizing owner race/ethnicity and gender.** Definition of race and ethnic groups in the 1998 SSBF are slightly different than the classifications used in the 2000 Census and 2007 ACS. In the Survey, businesses are classified into the following five race and ethnic groups:

- Non-Hispanic white;
- Hispanic American;
- African American;
- Asian American;
- Native American; and
- Other (unspecified).

A business is considered Hispanic American-owned if 50 percent or more of the owners are Hispanic American, regardless of race. All businesses reporting 50 percent or less Hispanic American ownership are included in the racial group that owns more than 50 percent of the company. No firms reported ownership by "other."

Similarly, firms were classified as female-owned if more than 50 percent of the firm was owned by female individuals. Firms owned half by female owners and half by male owners were included in the male category.

**Defining selected industry sectors.** In the 1998 SSBF each business was classified into an industry by SIC codes. Using these data, the study team created industry variables and included each business into one of the following categories:

- Construction;
- Mining;
- Transportation, communications and utilities;
- Finance, insurance and real estate;
- Trade;
- Engineering;
- Services (excluding engineering); and
- Agriculture, forestry and fishing.

**Region variables.** The SSBF divides the United States into nine regions. California is included in the Pacific region.

**Loan denial variables.** In the 1998 survey, firm owners were asked if they have applied for a loan in the last three years and whether their loan applications were always, sometimes or never approved. For the purposes of this study, firms that responded with sometimes approved or always approved were considered as having loans approved. Only firms that were never approved were classified being denied a loan.

**Data for 2003.** The 2003 SSBF differs from previous surveys in the population surveyed, the variables available and in data reporting.

**Population differences.** Similar to the 1998 survey, the 2003 survey records data from businesses with 500 or fewer employees. The sample contains data from 4,240 firms, but in 2003, minority-owned firms were not oversampled. In the 1998 data, 7.3 percent of the firms were surveyed were owned by Hispanic Americans, however in 2003 that number dropped to 4 percent. Numbers dropped from 7.7 percent to 2.8 percent and 5.7 percent to 4.2 percent for African American-owned and Asian American-owned firms, respectively.

**Variable differences.** In the 2003 SSBF, businesses were able to give responses on owner characteristics for up to three different owners. The data also include a fourth variable that is a weighted average of other answers provided for each question. In order to define variables consistently from the 1998 to 2003 surveys, BBC used the final weighted average for variables on owner characteristics. Firms were then divided into race, ethnicity and gender groups according to the same guidelines used for the 1998 data.

Industry, region and loan denial variables for the 2003 survey were defined by the study team along the same guidelines as the 1998 survey with one exception. The 2003 survey did not include any firms classified in the agriculture, forestry and fishing industry.

**Data reporting.** Due to missing responses to survey questions in both the 1998 and 2003 datasets, data were imputed to fill in missing values. The missing values in the 2003 data set were imputed differently than in previous studies. The 1998 survey has one imputation so the number of observations in the data set matches the number of firms surveyed. However, the 2003 data includes five imputations. Thus there are 21,200 observations, five for each of the 4,240 firms surveyed. In both data sets, when the firm provided an answer to a survey question, that value is not changed during imputation, only the missing values are predicted and filled in.

As discussed in a recent paper about the 2003 imputations generated by the Finance and Economics Discussion Series, missing survey values can lead to biased estimates and inaccurate variances and confidence intervals.[5] These problems can be corrected through use of multiple implicates. In order to provide the most accurate analysis, BBC utilized all five implicates provided with the 2003 data in analysis of the survey.

Multiple implicates were not provided with the 1998 data, thus the method of analysis used for the 2003 data was not applicable. To address this, the study team performed analysis two different ways, first only with observations whose data was not imputed and second with all observations. The differences in results were insignificant and the results presented are from the first method of analysis.

[5] Lieu N. Hazelwood, Traci L. Mach and John D. Wolken. *Alternative Methods of Unit Nonresponse Weight Adjustments: An Application from the 2003 Survey of Small Businesses*. Finance and Economics Discussion Series Divisions of Research and Statistics and Monetary Affairs, Federal Reserve Board. Washington, D.C., 2007. http://www.federalreserve.gov/pubs/feds/2007/200710/200710pap.pdf

### Survey of Business Owners (SBO)

BBC used data from the 2002 SBO to analyze mean annual firm receipts.

The SBO is conducted every five years by the U.S. Census Bureau. The most recent publication of the SBO was collected in 2002. Response to the survey is mandatory, which ensures comprehensive economic and demographic information for business and business owners in the U.S. All tax-filing businesses are covered in the survey: firms with paid employees and firms without paid employees. In 2002, almost 23 million firms were surveyed.

BBC compiled a subset of the SBO data including number of firms, number of firms with paid employees, number of firms without paid employees, and total receipts. This information was available by geographic location, industry, gender and race/ethnicity.

Data was collected by geographic area for the U.S. as well as several California counties, including Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties.

The Census Bureau uses 2007 North American Industry Classification System (NAICS) for classification of industry. BBC analyzed data for firms in all industries and for firms in the construction industry.

To categorize business ownership of firms, the Census Bureau uses standard definitions for women-owned and minority-owned businesses. A business is defined as female-owned if more than half (51 percent or more) of the ownership and control is by women. Firms with joint male-/female-ownership were tabulated as an independent gender category. A business is defined as minority-owned if more than half (51 percent or more) of the ownership and control is African American, Asian, Hispanic, Native American or another minority group. Respondents had the option of selecting one or more racial groups when reporting on business ownership. BBC then analyzed data pertaining to the following six racial categorizations:

- African American;
- Asian American;
- Native American;
- White;
- Hispanic; and
- Non-Hispanic.

Certain subsets of the data were withheld because they did not meet publication standards. The SBO is also limited by disclosure laws to protect sensitive business data. Selected subsets of the data were withheld (e.g., Native American-owned firms in San Bernardino County) but the data are included in higher level totals (e.g., Native American-owned firms in California). BBC was unable to access a select number of data subsets on the county level for these reasons. The withheld data was not included in calculations for mean annual receipts.